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सं. 33] नई दिल्ली, अगस्त 11—अगस्त 17, 2013, शनिवार/श्रावण 20—श्रावण 26, 1935
No. 33] NEW DELHI, AUGUST 11—AUGUST 17, 2013, SATURDAY/SRAVANA 20—SRAVANA 26, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 6 अगस्त, 2013

का.आ. 1687.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए हरियाणा राज्य सरकार, गृह विभाग, चंडीगढ़ की दिनांक 24 जुलाई, 2013 की अधिसूचना सं. 20/6/2013-3एचजी-I द्वारा प्राप्त सहमति से भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 34 और 302 तथा आयुध अधिनियम, 1959 (1959 का 54) के अधीन दिनांक 20 जुलाई, 2013 को पुलिस थाना सिविल लाइन्स, गुडगांव में पंजीकृत एफआईआर सं. 501/2013 में तथा उपर्युक्त उल्लिखित अपराधों से संबंधित या उनसे संबद्ध अपराधों में किए गए प्रयासों, दुष्टेणाओं और षडयंत्रों तथा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध या अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त हरियाणा राज्य के संबंध में करती है।

[सं. 228/53/2013-एवीडी-II]

राजीव जैन, अवर सचिव।

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 6th August, 2013

S.O. 1687.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Haryana, Home Department, Chandigarh vide Notification No. 20/6/2013-3HG-I dated 24th July, 2013, hereby extends powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Haryana for investigation of FIR No. 501/2013 dated 20th July, 2013 under sections 34 and 302 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and Arms Act, 1959 (54 of 1959) registered at Police Station Civil Lines, Gurgaon and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[No. 228/53/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 8 अगस्त, 2013

का०आ० 1688.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं० 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मणिपुर राज्य सरकार, गृह विभाग, इम्फाल की दिनांक 20 मई, 2013 की अधिसूचना सं० 12/1(1)/2013-एच(सीबीआई) द्वारा प्राप्त सहमति से पुलिस थाना काकचिंग में स्वापक औषधि एवं मनःप्रभावी पदार्थ अधिनियम, 1985 (1985 का अधिनियम सं० 61) की धारा 21 और 29 तथा आयुध अधिनियम, 1969 (1969 का सं० 54) की धारा 27 के तहत मोरेह में तैनात 11 पुलिस कमांडो कर्मियों की दिनांक 28-04-2013 को पल्लेल से भारी मात्रा में गैरकानूनी मादक पदार्थ के साथ गिरफ्तारी से संबंधित पंजीकृत मामला एफआईआर सं० 62/(04)/2013 में उपर्युक्त उल्लिखित अपराधों से संबंधित या उनसे संबद्ध अपराधों में किए गए प्रयासों, दुष्टेणाओं और षडयंत्रों तथा उसी संव्यवहार में किए गए या उन्हीं तथ्यों से उत्पन्न किसी अन्य अपराध या अपराधों का अन्वेषण करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त मणिपुर राज्य के संबंध में करती है।

[सं० 228/43/2013-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 8th August, 2013

S.O. 1688.—In exercise of the powers conferred by sub-section (1) of section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Manipur, Home Department, Imphal vide Notification No. 12/1(1)/2013-H(CBI) dated 20th May, 2013, hereby extends powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Manipur for investigation of FIR No. 62(04)/2013 under sections 21 and 29 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (Act No. 61 of 1985) and section 27 of the Arms Act, 1959 (Act No. 54 of 1959) registered at Police Station Kakching relating to arrest of 11 Police Commando personnel posted at Moreh with large consignment of illegal drugs on 28.04.2013 from Pallel and attempts, abetments and conspiracies in relation to or in connection with the above mentioned offences and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[No. 228/43/2013-AVD-II]

RAJIV JAIN, Under Secy.

नई दिल्ली, 12 अगस्त, 2013

का०आ० 1689.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं० 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, नई दिल्ली स्थित सर्वोच्च न्यायालय और दिल्ली उच्च न्यायालय तथा परीक्षण न्यायालयों (अधीनस्थ न्यायालयों और सत्र न्यायालयों) में दिल्ली विशेष पुलिस स्थापना (केन्द्रीय अन्वेषण ब्यूरो) द्वारा संस्थापित आरसी० 05/(एस)/2007/एससीयू-V/एससीयू-IX/ नई दिल्ली (मेजर जनरल वी० के० सिंह, सेवानिवृत्त और अन्य व्यक्तियों के विरुद्ध सीबीआई मामले) में

अपीलों/पुनरीक्षणों और किसी भी न्यायालय में इस मामले से उत्पन्न अन्य मामला तथा इस मामले से संबंधित अन्य मामलों का परीक्षण संचालित करने के लिए श्री बी० आर० हान्डा, वरिष्ठ वकील को विशेष लोक अभियोक्त के पद पर नियुक्त करती है।

[सं० 225/59/2012-एवीडी-II]

राजीव जैन, अवर सचिव

New Delhi, the 12th August, 2013

S.O. 1689.—In exercise of the powers conferred by Sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri B.R. Handa, Senior Advocate as Special Public Prosecutor for conducting trial of RC 05 (S)/2007/SCU-V/ACU-IX/New Delhi (CBI case against Maj. Genl. V.K. Singh, Retd. and others), instituted by the Delhi Special Police Establishment (Central Bureau of Investigation) in Trial Courts (Subordinate Courts and Sessions Courts), Delhi High Court and the Supreme Court at New Delhi or other related matters as well as for appeals, revisions or other matters arising out of the said case in any of the courts.

[No. 225/59/2012-AVD-II]

RAJIV JAIN, Under Secy.

वित्त मंत्रालय

(वित्तिय सेवाएं विभाग)

नई दिल्ली, 5 अगस्त, 2013

का०आ० 1690.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्वारा, श्री मुकेश कुमार जैन (जन्म तिथि: 01.08.1960), महाप्रबंधक, देना बैंक को उनके द्वारा पदभार ग्रहण करने की तारीख से पांच वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, पंजाब एंड सिंध बैंक के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[सं० 4/5/2012-बीओ-I]

विजय मल्होत्रा, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 5th August, 2013

S.O. 1690.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of Clause 3 and sub-clause (1) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with

the Reserve Bank of India, hereby appoints Shri Mukesh Kumar Jain (DoB: 01.08.1960), General Manager, Dena Bank as Executive Director, Punjab & Sind Bank, for a period of five years from the date of his taking over charge of the post, or until further orders, whichever is earlier.

[No. 4/5/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 अगस्त, 2013

का०आ० 1691.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा, श्री राकेश सेठी (जन्म तिथि: 28.06.1956), महाप्रबंधक, बैंक ऑफ इंडिया को उनके द्वारा पदभार ग्रहण करने की तारीख से तथा 30.06.2016 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, यूनियन बैंक आफ इंडिया के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[सं० 4/5/2012-बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th August, 2013

S.O. 1691.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of Clause 3 and sub-clause (1) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri Rakesh Sethi (DoB: 28.06.1956), General Manager, Bank of India as Executive Director, Union Bank of India, with effect from the date of his taking over charge of the post and upto 30.06.2016 *i.e.*, the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[No. 4/5/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 अगस्त, 2013

का०आ० 1692.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा, श्री भुवनचन्द्र बी० जोशी (जन्म तिथि: 03.12.1956), महाप्रबंधक, बैंक ऑफ इंडिया को उनके द्वारा पदभार ग्रहण करने की तारीख से तथा 31.12.2016 तक अर्थात्

उनके द्वारा अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, बैंक ऑफ इंडिया के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[सं० 4/5/2012-बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th August, 2013

S.O. 1692.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of Clause 3 and sub-clause (1) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri Bhuwanchandra B. Joshi (DoB: 03.12.1956), General Manager, Bank of India as Executive Director, Bank of Baroda, with effect from the date of his taking over charge of the post and upto 31.12.2016 *i.e.*, the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[No. 4/5/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 2 अगस्त, 2013

का०आ० 1693.—भारतीय स्टेट बैंक अधिनियम, 1955 (1955 का 23) की धारा 19 के खण्ड (ख) और धारा 20 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा, श्रीमती अरुणधती भट्टाचार्य (जन्म तिथि : 18.03.1956), उप प्रबंध निदेशक, भारतीय स्टेट बैंक को उनके द्वारा पदभार ग्रहण करने की तारीख से 31.03.2016 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय स्टेट बैंक के प्रबंध निदेशक के रूप में नियुक्त करती है।

[सं० 2/3/2013-बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 2nd August, 2013

S.O. 1693.—In exercise of the powers conferred by clause (b) of section (19) and sub-section (1) of Section 20 of the State Bank of India Act, 1955 (23 of 1955), the Central Government, after consultation with Reserve Bank of India, hereby appoints Smt. Arundhati Bhattacharya (DoB: 18.03.1956), Deputy Managing Director, State Bank of India as Managing Director, State Bank of India, from the date of her taking over the charge of the post and upto 31.03.2016 *i.e.* the date of her attaining the age of superannuation or until further orders, whichever is earlier.

[No. 2/3/2013-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 अगस्त, 2013

का०आ० 1694.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात् एतद्द्वारा श्री जय कुमार गर्ग (जन्म तिथि: 10.01.1960), महाप्रबंधक, कार्पोरेशन बैंक को उनके द्वारा पदभार ग्रहण करने की तारीख से पांच वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, यूको बैंक के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[सं० 4/5/2012-बीओ-1]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th August, 2013

S.O. 1694.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of Clause 3 and sub-clause (1) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri Jai Kumar Garg (DoB: 10.01.1960), General Manager, Corporation Bank as Executive Director, UCO Bank, for a period of five years from the date of his taking over charge of the post, or until further orders, whichever is earlier.

[No. 4/5/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 अगस्त, 2013

का०आ० 1695.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात् एतद्द्वारा श्री आर० कोटीस्वरन (जन्म तिथि: 10.06.1956), महाप्रबंधक, बैंक ऑफ बड़ौदा को उनके द्वारा पदभार ग्रहण करने की तारीख से तथा 30.06.2016 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, बैंक आफ इंडिया के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[सं० 4/5/2012-बीओ-1]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th August, 2013

S.O. 1695.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of Clause 3 and sub-

clause (1) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri R Koteeswaran (DoB: 10.06.1956), General Manager, Bank of Baroda as Executive Director, Bank of India, with effect from the date of his taking over charge of the post and upto 30-06-2016, i.e. the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[No. 4/5/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 अगस्त, 2013

का०आ० 1696.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात् एतद्द्वारा श्री किशोर कुमार सांसी (जन्म तिथि: 19.08.1957), महाप्रबंधक, ओरियंटल बैंक ऑफ कामर्स को उनके द्वारा पदभार ग्रहण करने की तारीख से तथा 31.08.2017 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, पंजाब एंड सिंध बैंक के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[सं० 4/5/2012-बीओ-1]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th August, 2013

S.O. 1696.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of Clause 3 and sub-clause (1) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri Kishore Kumar Sansi (DoB: 19.08.1957), General Manager, Oriental Bank of Commerce as Executive Director, Punjab & Sind Bank, with effect from the date of his taking over charge of the post and upto 31-08-2017, i.e. the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[No. 4/5/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 अगस्त, 2013

का०आ० 1697.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय

रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा, श्री प्रद्युमन सिंह रावत (जन्म तिथि: 16.05.1956), महाप्रबंधक, बैंक आफ इंडिया को उनके द्वारा पदभार ग्रहण करने की तारीख से तथा 31.05.2016 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, केनरा बैंक के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[सं० 4/5/2012-बीओ-1]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th August, 2013

S.O. 1697.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of Clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri Pradyuman Singh Rawat (DoB: 16.05.1956), General Manager, Bank of India as Executive Director, Canara Bank, with effect from the date of his taking over charge of the post and upto 31-05-2016, *i.e.* the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[No. 4/5/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 अगस्त, 2013

का०आ० 1698.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा, श्री अनिमेश चौहान (जन्म तिथि: 30.06.1957), महाप्रबंधक, बैंक आफ बड़ौदा को उनके द्वारा पदभार ग्रहण करने की तारीख से तथा 30.06.2017 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, सेन्ट्रल बैंक आफ इंडिया के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[सं० 4/5/2012-बीओ-1]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th August, 2013

S.O. 1698.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of Clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri Animesh Chauhan (DoB: 30.06.1957), General Manager, Bank of

Baroda as Executive Director, Central Bank of India, with effect from the date of his taking over charge of the post and upto 30.06.2017, *i.e.* the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[No. 4/5/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 अगस्त, 2013

का०आ० 1699.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा, श्री अरुण श्रीवास्तव (जन्म तिथि: 17.06.1957), महाप्रबंधक, बैंक आफ बड़ौदा को उनके द्वारा पदभार ग्रहण करने की तारीख से तथा 30.06.2017 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, बैंक आफ इंडिया के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[सं० 4/5/2012-बीओ-1]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th August, 2013

S.O. 1699.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of Clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri Arun Shrivastava (DoB: 17.06.1957), General Manager, Bank of Baroda as Executive Director, Bank of India, with effect from the date of his taking over charge of the post and upto 30.06.2017, *i.e.* the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[No. 4/5/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 अगस्त, 2013

का०आ० 1700.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्द्वारा, श्रीमती तृष्णा गुहा (जन्म तिथि: 21.08.1957), महाप्रबंधक, इलाहाबाद बैंक को उनके द्वारा पदभार ग्रहण करने की तारीख से तथा 31.08.2017 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले

आदेशों तक, जो भी पहले हो, देना बैंक के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[सं० 4/5/2012-बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th August, 2013

S.O. 1700.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of Clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Smt. Trishna Guha (DoB: 21.08.1957), General Manager, Allahabad Bank as Executive Director, Dena Bank, with effect from the date of her taking over charge of the post and upto 31.08.2017, i.e. the date of her attaining the age of superannuation or until further orders, whichever is earlier.

[No. 4/5/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

नई दिल्ली, 5 अगस्त, 2013

का०आ० 1701.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्वारा, यूनियन बैंक आफ इंडिया के महाप्रबंधक श्री टी०के० श्रीवास्तव (जन्म तिथि: 25.07.1956) को 01.09.2013 को या उसके द्वारा पदभार ग्रहण करने की तारीख से तथा 31.07.2016 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, सिंडिकेट बैंक के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[सं० 4/5/2012-बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 5th August, 2013

S.O. 1701.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of Clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri T.K. Shrivastava (DoB: 25.07.1956), General Manager, Union Bank of India as Executive Director, Syndicate Bank, with effect from the date of his taking over charge of the post on or after 01.09.2013 and upto 01.07.2016, i.e. the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[No. 4/5/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 7 अगस्त, 2013

का०आ० 1702.—सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ड के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उप-धारा (1) के खंड (ii) के “नेशनल इंस्टिट्यूट ऑफ मेंटल हेल्थ एण्ड न्यूरो साइंस (एनआईएमएचएनएस), बंगलौर, (पैन-एबीटीएन 6120बी) को 2012-13 से निम्नलिखित शर्तों के अधीन ‘विश्वविद्यालय, कॉलेज या अन्य संस्थान’ की श्रेणी में अनुमोदित किया गया है, नामतः—

- (i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;
- (ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;
- (iii) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए इसके द्वारा प्राप्त राशि के संबंध में अलग खाता बही रखेगा, जिसमें अनुसंधान करने के लिए प्रयुक्त राशि दर्शाई गई हो, उक्त अधिनियम की धारा 288 की उप-धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा-परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप-धारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट, मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा;
- (iv) अनुमोदित संगठन प्राप्त दान और संबंधित विभागों के संबंध में वैज्ञानिक अनुसंधान के लिए प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा-परीक्षा रिपोर्ट के साथ लेखा-परीक्षक द्वारा विधिवत सत्यापित ऐसे विवरण की प्रतिलिपि प्रस्तुत करेगा।

2. केन्द्र सरकार यह अनुमोदन वापस ले लेगी यदि अनुमोदित संगठन:—

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अलग लेखा बही रखने में असफल रहता है; अथवा
- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा-परीक्षा रिपोर्ट प्रस्तुत करने में असफल रहता है; अथवा
- (ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत करने में असफल रहता है; अथवा

- (घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को सही नहीं पाया जाएगा; अथवा
- (ङ) उक्त नियमावली के नियम 5ग और 5ड के साथ पठित उक्त अधिनियम की धारा 35 की उप-धारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा और उनका पालन नहीं करेगा।

[अधिसूचना सं० 60/2013/फा० सं० 203/36/2012/आ०क०नि-II]
ऋचा रस्तोगी, अवर सचिव

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 7th August, 2013

S.O. 1702.—It is hereby notified for general information that "National Institute of Mental Health and Neuro Science" (NIMHANS) Bangalore, (PAN-AABTN6120B) has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with Rule 5C and 5E of the Income-tax Rules, 1962 (said Rules), for 2012-13 onwards in the category of 'University, College or Other Institution', subject to the following conditions, namely:—

- The sums paid to the approved organization shall be utilized for scientific research;
- The approved organization shall carry out scientific research through its faculty members or its enrolled students;
- The approved organization shall maintain separate books of accounts in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an

accountant as defined in the explanation to sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139 of the said Act;

- The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research in respect of concerned Departments and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization:—

- fails to maintain separate books of accounts referred to in sub-paragraph (iii) of paragraph 1; or
- fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
- fails to furnish its statement of the donations received and sums applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or
- ceases to carry on its research activities or its research activities are not found to be genuine; or
- ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of section 35 of the said Act read with rules 5C and 5E of the said Rules.

[Notification No. 60/2013/F.No. 203/36/2012-ITA-II]

RICHA RASTOGI, Under Secy.

नई दिल्ली, 6 अगस्त, 2013

का०आ० 1703.—केन्द्रीय सरकार ऋण वसूली अधिकरण I, II और III कोलकाता की अवस्थिति के 1 जुलाई, 2013 से कॉलम 3 के अंतर्गत वर्णित स्थान से कॉलम 4 के अंतर्गत वर्णित स्थान पर परिवर्तन को एतद्वारा अधिसूचित करती है।

क्र० सं०	ऋण वसूली अधिकरण	स्थान जहां अधिकरण कार्यरत थी	स्थान जहां पर अधिकरण कार्य करेगा
(i)	ऋण वसूली अधिकरण-I, कोलकाता	8वां तल, 9, पुराना पोस्ट ऑफिस मार्ग, कोलकाता-700001	9वां तल, 'जीवन सुधा' 42सी, जवाहरलाल नेहरू रोड कोलकाता-700071
(ii)	ऋण वसूली अधिकरण-II, कोलकाता	15 एन, नेल्लई सेनगुप्ता सरणी (चौथा तल), हुडको बिल्डिंग, कोलकाता-700087	7वां तल, 'जीवन सुधा' 42सी, जवाहरलाल नेहरू रोड, कोलकाता-700071
(iii)	ऋण वसूली अधिकरण-III, कोलकाता	7वां तल, नागालैंड हाऊस, 11 एवं 13, शेक्सपीयर सरणी, कोलकाता	8वां तल, 'जीवन सुधा' 42सी, जवाहरलाल नेहरू रोड, कोलकाता-700071

[सं० 33/1/1999-डीआरटी]

राजीव शर्मा, अवर सचिव

New Delhi, the 6th August, 2013

S.O. 1703.—The Central Government hereby notifies the change in the location of Debt Recovery Tribunals-I, II & III, Kolkata from the place mentioned in column 3 to the place mentioned in column 4 in the table with effect from 1st July, 2013.

S.No.	Debts Recover Tribunal	Place where the Tribunal was functioning from	Place at which the Tribunal will function from
(i)	Debts Recovery Tribunal-I, Kolkata	8th Floor, 9, Old Post Office Street Kolkata-700001	9th Floor, 'Jeevan Sudha' 42C, Jawaharlal Nehru Road, Kolkata-700071
(ii)	Debts Recovery Tribunal-II, Kolkata	15 N, Nellei Sengupta Sarani (4th Floor), HUDCO Building, Kolkata-700087	7th Floor 'Jeevan Sudha' 42C, Jawaharlal Nehru Road, Kolkata-700071
(iii)	Debts Recovery Tribunal-III, Kolkata	7th Floor, Nagaland House, 11 & 13, Shakespeare, Sarani Kolkata	8th Floor 'Jeevan Sudha' 42C, Jawaharlal Nehru Road, Kolkata-700071

[No. 33/1/1999-DRT]

RAJIV SHARMA, Under Secy.

नई दिल्ली, 7 अगस्त, 2013

का०आ० 1704.—राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) स्कीम, 1970/1980 के खंड 3 के उप-खंड (1) और खंड 8 के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात, एतद्वारा, श्री आर० आत्माराम (जन्म तिथि: 27.10.1956), महाप्रबंधक, आन्ध्रा बैंक को उनके द्वारा पदभार ग्रहण करने की तारीख से तथा 31.10.2016 तक अर्थात् उनके द्वारा अधिवर्षिता की आयु प्राप्त करने की तारीख तक अथवा अगले आदेशों तक, जो भी पहले हो, बैंक आफ महाराष्ट्र के कार्यपालक निदेशक के रूप में नियुक्त करती है।

[सं० 4/5/2012-बीओ-I]

विजय मल्होत्रा, अवर सचिव

New Delhi, the 7th August, 2013

S.O. 1704.—In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings), Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri R. Athmaram (DoB: 27.10.1956), General Manager, Andhra Bank as Executive Director, Bank of Maharashtra, with effect from the date of his taking over charge of the post and upto 31.10.2016, i.e. the date of his attaining the age of superannuation or until further orders, whichever is earlier.

[No. 4/5/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

(कार्यालय मुख्य आयकर आयुक्त)

जयपुर, 7 अगस्त, 2013

का०आ० 1705.—आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खण्ड (23 सी) की उप-धारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्वारा निर्धारण वर्ष 2012-13 एवं आगे के लिए कथित धारा के उद्देश्य से “श्री राम एजुकेशन सोसाइटी, अलवर” (स्थाई खाता संख्या-AACAS2090P) को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उप-खंड (23सी) की उप-धारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[अधिसूचना सं० 06/2013-14/क्रमांक मुआआ/अआआ/ (मु०)/ जय/10(23सी)(vi)/13-14/2536]

अतुलेश जिंदल, मुख्य आयकर आयुक्त

(OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX)

Jaipur, the 7th August, 2013

S.O. 1705.—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules, 1962 the Chief Commissioner of Income-tax, Jaipur hereby approves "Shri Ram Education Society" for the purpose of said section for the A.Y. 2012-13 onwards.

Provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[Notification No. 06/2013-14/No. CCIT/JPR/ITO(Tech.)/ 10(23C)(vi)/2013-14/2536]

ATULESH JINDAL, Chief Commissioner of Income-tax

जयपुर, 7 अगस्त, 2013

(सं० 07/2013-14)

का०आ० 1706.—आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खण्ड (23 सी) की उपधारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्वारा निर्धारण वर्ष 2012-13 एवं आगे के लिए कथित धारा के उद्देश्य से "चिनार एजुकेशन फाउंडेशन, अलवर" (स्थाई खाता संख्या-AAATC6420A) को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उपखंड (23सी) की उपधारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्रमांक मुआआ/अआआ/ (मु०)/ जय/10(23सी)(vi)/ 13-14]

अतुलेश जिंदल, मुख्य आयकर आयुक्त

Jaipur, the 7th August, 2013

(No. 07/2013-14)

S.O. 1706.—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules, 1962 the Chief Commissioner of Income-tax, Jaipur hereby approves "**Chinar Education Foundation, Liwari, Jaipur Road, Alwar**" for the purpose of said section for the A.Y. 2012-13 onwards.

Provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CCIT/JPR/ITO(Tech.)/10(23C)(vi)/2013-14]

ATULESH JINDAL, Chief Commissioner of Income-tax

कृषि मंत्रालय

(कृषि एवं सहकारिता विभाग)

(राजभाषा प्रभाग)

नई दिल्ली, 7 अगस्त, 2013

का०आ० 1707.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में कृषि मंत्रालय, कृषि एवं सहकारिता विभाग के सम्बद्ध कार्यालय, अर्थ एवं सांख्यिकी निदेशालय, कृषि भवन, नई दिल्ली के अंतर्गत निम्नलिखित प्रशासनिक नियंत्रणाधीन कार्यालयों को जिसके 80% कर्मचारीवृन्द ने हिन्दी का कार्यसाधन ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।—

1. विपणन आसूचना एकक, अर्थ एवं सांख्यिकी निदेशालय, कृषि मंत्रालय, भारत सरकार, केन्द्रीय सदन परिसर, सैक्टर-10,

ब्लॉक-ए, दूसरी मंजिल, कमरा नं० 211, विद्याधर नगर, जयपुर (राजस्थान)-302023

2. विपणन आसूचना एकक, अर्थ एवं सांख्यिकी निदेशालय, कृषि मंत्रालय, भारत सरकार, दूसरी मंजिल, हाल-2, केन्द्रीय भवन, सैक्टर एच अलीगंज, लखनऊ-226024
3. विपणन आसूचना एकक, अर्थ एवं सांख्यिकी निदेशालय, कृषि मंत्रालय, भारत सरकार, प्लॉट नं० जी-11, तिलक नगर, शोपिंग सेंटर एफ-2, प्रथम तल, लक्ष्मी परिसर, बवदीया काला, भोपाल-462039
4. विपणन आसूचना एकक, अर्थ एवं सांख्यिकी निदेशालय, कृषि मंत्रालय, भारत सरकार, बी-301, केन्द्रीय सदन, बेलपुर नवी मुम्बई-400614
5. विपणन आसूचना एकक, अर्थ एवं सांख्यिकी निदेशालय, कृषि मंत्रालय, भारत सरकार, गृह संख्या-5ए/65 अल्पना मार्केट के पूर्व पंकज अपार्टमेंट के पीछे, पाटलीपुत्र कालोनी, पटना-800013

[सं० 3-3/2011-रा०भा० नीति]

आर० बी० सिन्हा, संयुक्त सचिव

MINISTRY OF AGRICULTURE

(Department of Agriculture and Cooperation)

(O.L.DIVISION)

New Delhi, the 7th August, 2013

S.O. 1707.—In pursuance of Sub Rule (4) of the Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976 the Central Government hereby notifies the following offices which are under the administrative control of the Directorate of Economics & Statistics, New Delhi, an attached office of the Department of the Agriculture & Cooperation, Ministry of Agriculture, whereof 80% staff have acquired the working knowledge of Hindi:—

1. Market Intelligence Unit, Directorate of Economics & Statistics, Ministry of Agriculture Govt. of India, Kendriya Sadan, Block-A, Sector-10, Room No. 211, V.D. Nagar, Jaipur-302023
2. Market Intelligence Unit, Directorate of Economics & Statistics, Ministry of Agriculture Govt. of India, 2nd floor, Hall 2, Kendriya Bhawan, Sector-H, Aliganj, Lucknow-226024
3. Market Intelligence Unit, Directorate of Economics & Statistics, Ministry of Agriculture Govt. of India, Plot No. G-11, Shopping Centre, F. 2, 1st floor, Laxmi Parisar, Tilak Nagar, Bhopal-462039
4. Market Intelligence Unit, Directorate of Economics & Statistics, Ministry of Agriculture Govt. of India, B-301, Kendriya Sadan, Belapur, Navi Mumbai-400614

5. Market Intelligence Unit, Directorate of Economics & Statistics, Ministry of Agriculture Govt. of India,
House No. 5A/65, East of Alpana Market, Behind

Pankaj Apartment, Patliputra Colony, Patna-800013
[No. 3-3/2011-Official Language Policy]
R. B. SINHA, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 31 जुलाई, 2013

का०आ० 1708.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (को) में संशोधन किया गया/किये गये हैं।

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	संशोधन की संख्या और तिथि	स्थापित तिथि
1.	आईएस 262:1982 फ़ैरस सल्फेट, हेप्टाहाईड्रेट के लिए विशिष्टि (दूसरा पुनरीक्षण)	संशोधन संख्या 1 जुलाई 2013	31 जुलाई, 2013
2.	आईएस 8325:1983 निकल उत्प्रेरक के लिए निकल स्वरूप के लिए विशिष्टता (पहला पुनरीक्षण)	संशोधन संख्या 1 जुलाई 2013	31 जुलाई, 2013
3.	आईएस 1040:1987 कैल्शियम कार्बाइड तकनीकी के लिए विशिष्टि (तीसरा पुनरीक्षण)	संशोधन संख्या 1 जुलाई 2013	31 जुलाई, 2013
4.	आईएस 5321:1969 सोडा नींबू के लिए विशिष्टता (कार्बन डाइऑक्साइड शोषक के रूप में)	संशोधन संख्या 3 जुलाई 2013	31 जुलाई, 2013

इन भारतीय मानकों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली कोलकता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं। भारतीय मानकों को <http://www.standardsbis.in> द्वारा इंटरनेट पर खरीदा जा सकता है।

[संदर्भ सीएचडी 1/आईएस 262, 8325, 1040 और 5321]

डा० राजीव के० झा, वैज्ञानिक 'एफ' एवं प्रमुख (रसायन)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 31st July, 2013

S.O. 1708.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

Sl.No.	No. and year of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
1	2	3	4
1.	IS 262:1982 Specification for ferrous sulphate, heptahydrate (second revision)	Amendment No. 1 July 2013	31 July, 2013

1	2	3	4
2.	IS 8325:1983 Specification for nickel formate for nickel catalyst (first revision)	Amendment No. 1 July 2013	31 July, 2013
3.	IS 1040:1987 Specification for calcium carbide, technical (third revision)	Amendment No. 1 July 2013	31 July, 2013
4.	IS 5321: 1967 Specification for soda lime (as carbon dioxide absorbent)	Amendment No. 3 July 2013	31 July, 2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices: New Delhi, Kolkata Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune Thiruvananthapuram. On line purchase of Indian standard can be made at: <http://www.standardsbis.in>.

[Ref. CHD 1/IS 262, 8325, 1040, 5321]

Dr. RAJIV K. JHA, Scientist 'F' & Head (CHD)

नई दिल्ली 5 जुलाई, 2013

का०आ० 1709.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया वह स्थापित हो गए हैं:-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस/आईएसओ 20022-2: 2007 वित्तीय सेवाएं - सार्वभौमिक वित्तीय उद्योग संदेश योजना भाग 2 पंजीकरण निकायों की भूमिका और दायित्व	—	31 मार्च, 2013
2.	आई एस 15413:2013/आईएसओ 4217:2008 मुद्रा एंव निधि अंकन नियमावली (पहला पुनरीक्षण)	—	28 फरवरी, 2013

इस मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकता, चण्डीगढ़, चेन्नई, मुम्बई, तथा शाखा कार्यालयों : अहमदाबाद, बंगलुरु, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ एम एस डी/जी-8 अधिसूचना]

निर्मल कुमार पाल, वैज्ञानिक 'एफ' एवं प्रमुख (प्रबन्ध एवं तंत्र)

New Delhi, the 5th July, 2013

S.O. 1709.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standard, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :—

SCHEDULE

Sl. No.	No. and Year of the Indian Standard Established	No. and Year of Indian Standard, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS/ISO 20022-2: 2007 Financial Services - Universal Financial Industry Message Scheme Part 2 Roles and Responsibilities of the Registration Bodies	—	31 March, 2013
2.	IS 15413:2013/ISO 4217:2008 Codes for the representation of currencies and funds (First Revision)	—	28 February, 2013

Copy of above Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and its Regional Offices At Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices at Ahmedabad, Bangalore, Bhopal Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Thiruvananthapuram.

[Ref: MSD/G-8 Notification]

NIRMAL KUMAR PAL, Scientist 'F' & Head (MSD)

नई दिल्ली, 31 जुलाई, 2013

का०आ० 1710.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि अनुसूची में दिये मानक (को) में संशोधन किया गया/किये गये हैं :—

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1	आई एस 1586 (part 1):2010 उष्मा सह सामग्रियों के नमूने लेने की और भौतिक परीक्षण पद्धतियां भाग 1 उत्पापमिति शंकु समतुल्य (पीसीई) या गलन बिंदु का निर्धारण (तीसरा पुनरीक्षण)	संशोधन संख्या 1 जून 2013	30 जून, 2013

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9 बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चंडीगढ़ चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध है।

[संदर्भ एमटीडी 15/टी-66]

पी० घोष, वैज्ञानिक 'एफ' एवं प्रमुख (एमटीडी)

New Delhi, the 31st July, 2013

S.O. 1710.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Amendment(s), Indian Standards, particulars of which are given in the Schedule here to annexed have been established on the date indicated against each :—

SCHEDULE

Sl. No.	IS No. & Title of the amendment(s)	No. & year of the Amendment (s)	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1	IS 1528 (Part 1): 2010 Methods of sampling and physical tests for refractory materials Part 1 Determination of pyrometric cone equivalent (PCE) or softening point (third revision)	Amendment No. 1 June 2013	30 June, 2013

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: MTD 15/T-66]

P. GHOSH, Scientist 'F' & Head (MTD)

नई दिल्ली, 7 अगस्त, 2013

का०आ० 1711.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप नियम (4) के अनुसरण में, उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय (खाद्य और सार्वजनिक वितरण विभाग) के प्रशासनिक नियंत्रणाधीन केन्द्रीय भंडारण निगम के निम्नलिखित कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को राजपत्र में अधिसूचित करती है:-

केन्द्रीय भंडारण निगम,
क्षेत्रीय कार्यालय, वेयरहाउसिंग कॉम्प्लेक्स,
रावांभाटा, पोस्ट बीरगांव रायपुर।

[सं. ई-11011/1/2008-हिन्दी]
प्रशांत त्रिवेदी, संयुक्त सचिव

New Delhi, the 7th August, 2013

S.O. 1711.—In pursuance of Sub-Rule (4) of rule 10 of the Official Language (Use for official purpose of the Union) Rules, 1976 the Central Government hereby notifies the following office of Food Corporation of India under the administrative control of the Ministry of Consumer Affairs, Food & Public Distribution (Deptt. of Food & Public Distribution), where of more than 80% of staff have acquired the working knowledge of Hindi:

Central Warehousing Corporation,
Regional Office, Warehousing Complex,
Rawanbhata, Post Birgaon, Raipur.

[No. E-11011/1/2008-Hindi]

PRASHANT TRIVEDI, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 8 जुलाई 2013

का०आ० 1712.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 73/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 03/6/2013 को प्राप्त हुआ था।

[सं० एल-20012/19/2003-आई आर (सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 8th July, 2013

S.O. 1712.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 73/2003) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial dispute between the management of M/s. BCCL and their workman, received by the Central Government on 03/06/2013.

[No. L-20012/19/2003-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO.1) DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A)
OF I.D. ACT, 1947

Ref. No. 73 of 2003

**Employers in relation to the management of Govindpur
Area III of M/S/ B.C.C.L.**

AND

Their workmen

Present :— Sri Ranjan Kumar Saran, Presiding
Officer

APPEARANCES:

For the Employers. : Sri D.K. Verma,
Advocate
For the workman : Sri K.N. Singh, Rep.
State : Jharkhand
Industry :— Coal.
Dated. 14/05/2013

AWARD

By Order No. L-20012/19/2003-IR-(C-I), dt. 26/07/2003, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal.

SCHEDULE

“क्या मैसर्स भारत कोकिंग कोल लिमिटेड के प्रबंधन द्वारा कर्मकार श्री किशुन भुईयों, माइनर लोडर, कार्यरत हैवी व्हीकल ड्राइवर, कूरीडीह कोलियरी को दिनांक 22.3.2001 से सेवानिवृत्त किया जाना न्याय एवं विधिक दृष्टि से सही एवं उचित है? यदि नहीं तो उक्त कर्मकार किन लाभों को पाने के हकदार हैं?”

2. The case is received from the Ministry of Labour on 19-08-2003. After notice, the Sponsoring Union files their written statement on 27-08-2003. The short point to be decided in the case is as to whether retirement of the workman on 22-03-2001 is proper or premature.

3. The workman in his written statement has submitted that, at the time of joining his job, he was 21 years, and as such he is to be superannuated much later not on 23.03.2001.

4. On the other hand the management in his written statement submitted that, the workman never raised objection about his age before hand, except at the time of his retirement. Moreover as per medical test, his age was determined and that was noted in the Form "B" register maintained by the Company.

5. The entire picture of the case will be clear from the deposition *i.e.* cross-examination of the workman which portion is extracted below:—

"I have no document to show regarding my date of Birth. I was appointed in place of my mother. My mother took VRS. I was appointed in the year 1978. I gave my age as 21 years at the time of Medical

examination. I had not given any paper to the doctor to show that my age was 21 years. I was not given retirement notice. I have been retired as per record of the management,"

6. This being the evidence of the workman in the absence of any documentary evidence regarding age of the workman, and as the dispute has been raised by the Union/workman at the time of his retirement, his claim is not accepted.

7. Considering the fact and circumstances, I hold that the action of the management of M/s BCCL in retiring Sri Kishun Bhuia, Miner Loader working as heavy vehicle Driver of Kuridih *w.e.f.* 22.03.2001 is justified and fair, Hence the workman is not entitled to any relief.

In the result, the reference is answered in negative.

This is my award

R. K. SARAN, Presiding Officer.

नई दिल्ली, 11 जुलाई, 2013

का.आ. 1713.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स पवन हंस हेलिकाप्टर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या सी.जी.आई.टी./2/34/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/07/2013 को प्राप्त हुआ था।

[सं. एल-11012/26/2004-आई. आर. (सीएम. I)]

एम.के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th July, 2013

S.O. 1713.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-2/34 of 2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of M/s. Pawan Hans Helicopters Ltd. and their workmen, received by the Central Government on 10/07/2013.

[No. L-11012/26/2004-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 2, MUMBAI**

PRESENT

K. B. KATARE, Presiding Officer

Reference No. CGIT-2/34 of 2005

EMPLOYERS IN RELATION TO THE MANAGEMENT OF M/S. PAWAN HANS HELICOPTERS LTD.

The General Manager
M/s. Pawan Hans Helicopters Ltd.
Juhu Airport
S.V. Road
Vile Parle (W)
Mumbai-400056.

AND

THEIR WORKMAN

Shri Vivekanand S. Sonawane
C/o. Mahadeo G. Shinde
20/2, Mohd. Jamal Chawl
Nehru Nagar
Kurla (E)
Mumbai-400 024.

APPEARANCES:

FOR THE EMPLOYER : Mr. Abhay Kulkarni,
Advocate.

FOR THE WORKMAN : Mr. M.B. Anchan,
Advocate.

Mumbai, dated the 30th April, 2013

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No.L-11012/26/2004-IR(C-I) dated 15/12/2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the management of M/s. Pawan Hans Helicopters Ltd., Mumbai in terminating/discontinuing the services of Shri Vivekanand S. Sonawane, Jr. Assistant w.e.f. 21/3/1995 is just and legal? If not, to what relief is the workman entitled?"

2. After receipt of the reference from Ministry both the parties were served with notices. In response to the notice the second party workman has filed his statement of claim at Ex-6. According to him, he was appointed as a Jr. Assistant in Tool Crib Section of Material Department of the Pawan Hans Ltd. Mumbai from 26/4/1994 on monthly salary of Rs. 2500/- upto 25/10/1994 on contract basis. The said period was extended thrice by one month on each occasion. The Sr. Manager, Mr. N.M. Upadhyay told the second party that his services would be terminated after 25/11/1995. The workman pointed out to him that he had completed more than 240 days continuous service and entitled for permanency. However Mr. Upadhyay did not listen to him. Therefore the workman filed complaint (ULP) no. 94/95 in Industrial Court Mumbai. The Court passed

ex-parte interim order restraining the respondent from terminating the services of the workman. The said order was subsequently vacated. The workman worked continuously from 24/6/1994 to 20/3/1995. He had worked for about 329 days.

Thereafter they did not allow him to resume his duties. His gate pass and identity card were forcibly taken away by the Security Inspector as per the order of Mr. A.K. Srivastava. Thereafter he used to report daily at the gate for duty. However he was not allowed to enter in the premises. His services were terminated w.e.f. 21/03/1995 without giving any notice and without assigning any reason. Mr. Srivastava assured the workman to reinstate him if he withdrew the complaint. Therefore workman had withdrawn the complaint. However Mr. Srivastava did not keep his words. Therefore workman filed another complaint. The said complaint was dismissed for want of jurisdiction with a liberty to approach appropriate forum. Thereafter workman approached ALC (c) Mumbai. As conciliation failed, ALC (C) made report to the Government. According to him he was recruited as Junior Assistant which is a permanent post. He worked for more than 240 days as a Jr. Assistant. The management had again invited application for the post of Jr. Assistant. Workman had applied for the same. However his application was not considered. On the other hand one Ms. Kalpana & Mr. Raju Kadam were appointed in the Accounts Department and Material Department. They are junior to him. The management has not followed provisions of Section 25 F of I.D. Act. As such his retrenchment is illegal. There were vacancies in the post of Jr. Assistant due to death of Muthu Swamy and retirement of Mr. Gawai. However they did not consider him for the appointment. Management followed unfair labour practice by terminating his services and by not appointing him. His wages of 20 days were also not paid in the month of March 1995. Therefore the workman prays that his termination be declared illegal and invalid and he be reinstated in the service with full back-wages and continuity of service.

3. The first party management resisted the statement of claim vide its written statement Ex-9. According to them, the second party has filed identical claim in CGIT, New Delhi bearing Ref. no. 223 of 1999. The second party cannot be allowed to continue to proceed with both the references simultaneously for the same incidence. Thus the claim is not maintainable. They further contended that the second party was appointed temporarily only for six months and he was granted extension purely on temporary basis. Therefore his appointment came to an end on expiry of the period and extended period. His appointment came to an end by efflux of time and not on account of retrenchment. His appointment was not renewed therefore it cannot be termed as retrenchment. After expiry of the time he was given extension thrice for a short interval of one month on each occasion. Therefore it cannot be called retrenchment.

His appointment was temporary for a short period and on expiry of the period, it came to an end. They have denied that they have followed any unfair labour practice. They denied that Mrs. Srivastava had promised to re-appoint him and therefore he has withdrawn the complaint. The complaint is not maintainable. The second party has filed the complaint to delay the matter indefinitely and to misguide the court. The complaint is false and not tenable. They denied that workman has worked continuously for 329 days without any break. They denied that workman has worked more than 240 days continuously and entitled for permanency. They denied that he was recruited against permanent post. They denied that Mr. Ghoradkar and Ms. Kalpana were junior to him. They denied all the allegations that he was retrenched illegally. They denied that he is entitled to be reinstated. Therefore they pray that the reference be dismissed with cost.

4. The second party workman vide his rejoinder Ex-11 denied that he had filed Ref. 223 of 1999 at CGIT, New Delhi. He reiterated the contents in his statement of claim and denied the contents in the written Statement.

5. This Tribunal recorded the evidence, heard both the advocates and passed the award dt. 17/01/2012. The said award was challenged before Hon'ble High Court in Writ Petition no. 6195 of 2012. The Hon'ble High Court by consent of both the parties set aside the award and remanded the matter back to dispose of the reference on the basis of material which is already on record. Accordingly both the advocates were given opportunity to argue the matter.

6. Following are the issues re-casted after remand of the matter by Hon'ble High Court. I record my findings thereon for the reasons to follow:

Sl. No.	Issues	Findings
1.	Whether the workman was appointed against permanent vacancy after following the procedure therefor?	Yes
2.	Does the first party prove that the workman was appointed temporarily for a specific period and his services came to an end on expiry of period of contract of his service?	No.
3.	Whether the workman is entitled to reinstatement with full back wages?	Partly yes.
4.	What order?	As per final order.

REASONS

Issues nos. 1 to 3:-

7. In the case at hand the fact is not disputed that in response to the advertisement, the workman has applied

for the post of Junior Assistant in the Tools Crib Section of Materials Department. Fact is also not disputed that he was interviewed and was selected for the said post. There is pleading to that effect. So also the MW-1 has admitted these facts in his cross-examination at Ex-17 that, the workman had applied on 12/4/1994 for the post of Jr. Assistant and he was called for interview by a telegram. He has also admitted in his cross that the workman was given appointment letter dt. 26/4/1994. The said appointment was for six months. He has also admitted in his corss that vide their letters dated 28/10/1994, 29/11/1994 and 4/1/1995 the said appointment was extended three times. In this respect the Ld. adv. for the first party submitted that the appointment of the workman was temporary and for a specific period of six months. Therefore termination of service under the said terms before the expiry of specific period or an expiry of period does not amount to retrenchment. In support of his argument the Ld. adv. for the first party resorted to Apex Court ruling in Escorts Ltd. V/s. Presiding Officer and anr. (1997) 11 SCC 521. In that case the workman was appointed for a specific period of two months vide letter dated 9/1/1987 and his services were terminated on 13/02/1987. In the circumstances Hon'ble Court in that case observed that;

"...the service of workman terminated on 13/2/1987 as per the terms of the contract of employment contained the appointment letter dt. 9/1/1987 which enable the appellant to terminate the services of workman at any stage without assigning any reason. Since the service of workman were terminated as per the terms of the contract of employment, it does not amount to retrenchment u/s 2 (oo) of the Act and the Labour Court was in error in holding that it constituted retrenchment and was protected by Section 25-F and 25-G of the Act."

8. The Id. Adv. for the first party also resorted to another ruling in Uptron India Ltd. V/s Shammi Bhan & Anr. 1998/CLR 1043 in respect of the fixed term contract service the Hon'ble court observed that,

"...on expiry of its original period, is not renewed and the services are terminated as a consequence of that period prima, it would not amount to 'Retrenchment'. Similarly if the services are terminated even before the expiry of the period of contract, but not in pursuance of stipulation contended in that contract that the services would be so terminated, then in that case also, the termination also would not amount to 'retrenchment' ".

9. The Id. Advocate for the first party also resorted to the Rajasthan High Court ruling in Sewa Ram V/s. The Municipal Board and anr. 2005 II CLR 615 wherein the Hon'ble Court observed that;

"When appointment is made for a limited period and services of an employee are terminated on expiry of

period of contract, then in such cases provision of Section 25 F of the Act of 1947 are not attracted. In these circumstances, the Ld. Labour Court has rightly held that services of petitioner came to an end on expiry of period of contract and such termination does into fall within the definition of retrenchment as defined in the Act of 1947."

10. In that case the workman there in was not appointed by following the procedure prescribed for recruitment. He had applied and was appointed for a particular period. Therefore after expiry of the period the Hon'ble Court held that, it does not amount to retrenchment. In the case at hand, the worker herein was appointed to the post of Jr. Assistant after following procedure prescribed therefor. Furthermore at the relevant time the post was permanent and vacant. The management ought to have appointed him on probation. Instead of that they appointed him for six months and thereafter his term was extended for three more months. In the circumstances it is clear that he was appointed after following the recruitment process as required to fill up a permanent post. In this backdrop the ratio laid down in the above rulings are not attracted to the set of facts of the present case.

11. The Ld. Adv. for the first party also resorted to Kerala High Court ruling in **Narmada Building Materials Pvt. Ltd. V/s. Devassy 1998 II CLR 26**, wherein the Hon'ble Court in para 11 of the judgement observed that:

"Once an appointment is for a fixed period, Section 25-F does not apply as if it is covered by Clause (bb) of Section 2 (oo) of the Act."

However in the same judgement the Hon'ble Court further observed that;

"When the appointment is for a fixed period, unless there is finding that power under clause (bb) of Section 2 (oo) was misused or vitiated by its malafied exercise, it cannot be held that the termination is illegal. In its absence the employer could terminate that service in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that power was misused by the management or the appointment for a fixed period as a colourable exercise of power."

12. In the case at hand, the Ld. Adv. for the second party submitted that, the management has misused the power and the appointment for fixed period was colourable exercise of power. According to him the workman was appointed against a clear vacancy and by following the procedure prescribed for the appointment of a regular employee. In the circumstances it was a mere colourable exercise of power to appoint the workman for a fixed period of six months. He further pointed out that, as per the Standing Orders of the First Party company there is no provision of appointing contract worker. He pointed out

clause 3.3 to clause 3.7 prescribes the various types of appointments of workmen. They are: (1) As per clause 3.3:- Casual worker whose employment is of casual nature, (2) 3.4 Part time:- who works less than normal period of working hours. (3) 3.5 Probationer:- appointed on probation of six months to fill up a permanent vacancy. (4) 3.6 Temporary:- appointed for a limited period temporarily as an additional workman in connection with temporary increase in work of permanent nature and workers appointed in a temporary vacancy.

13. As per the standing orders no contractual service is prescribed. The temporary appointment for a limited period is prescribed only to clear temporary increase in work of permanent nature and workers appointed in a temporary vacancy. In the case at hand the workman was neither appointed to clear increase in work nor appointed in a temporary vacancy. On the other hand his appointment was against a permanent vacancy and after following due process prescribed for the appointment of a permanent post. Therefore Ld. Adv. rightly submitted that the management cannot give such a contractual appointment for fix period which is not prescribed in Certified Standing Orders. The copy of the Certified Standing Order is on record with list Ex-14/17. It shows that management has misused its power and the appointment for a fixed period is a mere colourable exercise of power.

14. It is the case of the workman that he was appointed against permanent post as there was vacancy. The first party had denied that there was any vacancy of permanent post of Jr. Assistant and Assistant in P & A and F & A Department. In this respect both the parties have not filed on record the copy of the advertisement published in the newspaper. However from the copy of the application submitted by the workman with list Ex-14/2, it is revealed that, he has submitted the application to the Sr. Manager of the first party in response to their advertisement dated 31/10/1994 in Time of India. In the said letter it is mentioned in the beginning that, *"Being given to understand that there are few vacancies for the post of Jr. Assistant in your esteemed organization, I take this opportunity to submit my candidature for one of them."* Though the advertisement in Times of India is not on record, from this recital in the application of the workman dt. 12/04/1994, it is revealed that there were vacancies for the post of Jr. Assistant and as per the advertisement in Times of India the workman had applied for the same. He was called for interview, he was selected and then appointed. In this backdrop I come to the conclusion that, the appointment of the workman herein was against clear vacancy and he was appointed after following the recruitment procedure. Therefore the first party ought to have appointed him on probation of six months, as prescribed under clause 3.5 of the Standing Order of the company. They have misused the power and appointed the workman for a period of six months. The said appointment is against the provisions of Standing

Orders and it is colourable exercise of power. Therefore I hold that it was infact not an appointment for a fixed contractual period. As per clause 3.5 of the Standing Orders, the appointment has to be treated as appointment on probation for a period of six months and thereafter workman continued to work for three more months. It shows he had completed the probation period. Therefore I hold that the ratios laid down in the above referred rulings are not attracted to the set of facts of the present case as the appointment herein was infact not for a fixed period. It was shown to that effect illegally.

15. It is the case of the workman that he had worked more than 240 days continuously in a calendar year. Fact is not denied that workman has worked six months from the date of his appointment and thereafter he was given three months extension. It shows that the workman has worked for 9 months continuously. By simple calculation it is clear that the workman has worked continuously for 270 days in a calendar year. It is a fact that the workman worked till 28/3/1995. It shows that he has worked more than 240 days. Therefore the Id. adv. for the second party submitted that the workman was entitled to get the benefit of permanency. In support of his argument the Ld. Adv. resorted to Bombay High Court ruling in **Allen Alexander Yesudas Maikel V/s. Perfect Oil Seals and IRP & Ors. 1995 I CLR 942**. In that case the workman was employed on 20/04/1985 and continued in service till 22/11/1985. He was re-employed on 2/12/1985 for a period of six months and his services were terminated on 31/5/1986. In the circumstances the Hon'ble Court observed that;

The termination of petitioner's service on 31/5/1986 amounts to "*Retrenchment*" as defined in Section 2 (oo) of Industrial Disputes Act as it did not fall within the exception clause (bb), but failed within the main body of the definition of the Section. Since it is not in dispute that, the provision of Sec 25-F were not complied with, the retrenchment was *ab-initio*, illegal and invalid. The petitioner was therefore entitled to continue in service."

16. The Ld. Adv. also resorted to another Bombay High Court ruling in **Saudi Arabian Airlines V/s. Ashok Margovind Panchal and anr. 2002 III CLR 743**. In that case the workman was earlier appointed a Security Guard through contractor for about four years then he was directly employed for two years at the end of which his service was terminated. The Hon'ble Court held that, the post of Security Guard was of permanent nature and on completion of 240 days services the workman was entitled to be made permanent. On the point Hon'ble Court observed that;

"So long as property and lives both are to be protected, the work of security guard cannot be said to be of temporary nature. So long as property and lives are under the constant threat of insecurity. The work of security guards has to be considered as of perennial nature."

17. In that case the workman had completed more than 240 days continuous service and the post of the security guard was permanent. Therefore Hon'ble Court held that there was no application of Sec. 2 (oo) (bb) of The I.D. Act. In the case at hand as discussed above, the applications were invited against three vacant posts of Junior Assistant and the workman had applied for one of the same. Therefore I hold that the appointment of the workman was against clear vacancy. He was appointed after following the procedure for recruitment and he had completed more than 240 days continuous service. Thus he is entitled to be made permanent.

18. The Ld. Adv. for the first party in this respect further submitted that though the workman has worked more than 240 days continuously in a calendar year, he cannot claim permanency as his services came to an end after expiry of his term of services. In support of his argument the Ld. Adv. resorted to Apex Court ruling in **Delhi Transport Corporation V/s. Moolchand (2009) 1 SCC (L & S) 106** wherein the Hon'ble Court held that;

"Continuance on ad-hoc basis for a long period did not confer any right for regularization when initial appointment itself was not made by following due process of selection."

19. However in this respect I would like to point out that, the workman herein was appointed against clear vacancy and after following due recruitment process. There was advertisement inviting applications for the post. In response thereto the workman had applied. He was called for interview. The interview committee selected him. Thereafter he was appointed to the post of Jr. Assistant. Therefore, it cannot be said that he was appointed without following the due process of recruitment. Thus ratio laid down in this ruling is also not attracted to the set of facts of the present case.

20. In the light of above discussion it is clear that the workman was appointed as Jr. Assistant after following the recruitment process prescribed there for. He was appointed against clear vacancy of a permanent post. He has worked more than 240 days. Therefore he is entitled to be confirmed in the service. Instead of that the management has terminated his services without following the retrenchment procedure and without paying the retrenchment compensation.

21. In this respect, the Ld. Adv. for the first party management has alternatively submitted that instead of passing the order of reinstatement, compensation equal to retrenchment compensation can be paid to the workman. In this respect the Ld. Adv. for the second party pointed out that in the aforesaid ruling of Hon'ble Bombay High Court in **Alenxander Yesu Mickel & Saudi Arabia Airlines** (both referred supra), the Hon'ble High Court found that the termination in such cases were illegal and in first case Hon'ble Court directed the first party to reinstate the

workman with back wages from the date of termination. In the second case, the company was directed to make the workman permanent from the date on which he completed 240 days of service and also directed to pay him all the consequential benefits of permanency. In the light of above two Bombay High Court rulings I am convinced that retrenchment compensation would not serve the purpose and the workman here in is entitled to be reinstated as a permanent employee of the first party.

22. In respect of back wages the Ld. Adv. for the first party submitted that the workman is not expected to remain ideal. He must have been gainfully employed and must be earning for maintenance of himself and his family. He further pointed out that, that 'no work no wages' is the settled principle of law. Therefore he submitted that workman is not entitled to any back wages. As against this the Ld. Adv. for the second party submitted that the workman is a very poor person. Due to illegal termination he and his family suffered a lot. He further submitted that the workman is not gainfully employed. He is fighting with the management since the year 2001 and suffered a lot. Therefore he submitted that full back-wages should be awarded to the poor workman. After giving conscious thought to the arguments of both the parties, it is clear that awarding full back wages without any work would unnecessarily put financial burden on the first party. At the same time I also consider the fact that the workman is a very poor person and since termination he must have suffered a lot. It is also pertinent to note that he must have earned some minimum amount to maintain his family. In this backdrop to meet the ends of justice, I think 25% back wages would serve the purpose. In short I think it proper to direct the reinstatement with 25% back wages. Thus I decide the issues nos. 1 in the affirmative, issue no. 2 in the negative and issues nos. 3 & 4 as per the final order. Accordingly, I partly allow the reference and proceed to pass the following order:

ORDER

- (i) The reference is partly allowed with no order as to cost.
- (ii) The first party is directed to reinstate the workman forthwith with 25% back-wages and all other benefits with continuity in service.

Date: 30-04-2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 10 जुलाई, 2013

का.आ. 1714.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स टिस्को के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 62/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03/06/2013 को प्राप्त हुआ था।

[सं. एल-20012/17/2006-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th July, 2013

S.O. 1714.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2006) of the Central Government Industrial-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. TISCO and their workmen, received by the Central Government on 03/06/2013.

[No. L-20012/17/2006-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD.

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A)
OF I.D. ACT, 1947

Ref. No. 62 of 2006

Employers in relation to the management of Tisco Ltd.
Jamadoba

AND

Their workmen.

PRESENT:— SRI RANJAN KUMAR SARAN,
Presiding Officer

APPEARANCES:

For the Employers:— Sri. D.K. Verma, Advocate
For the workman. :— Sri D. Mukherjee, Rep.
State:—Jharkhand. Industry:—Coal.

Dated. 15/05/2013

AWARD

By Order No. L-20012/17/2006 IR-(CM-I), dt. 01/06/2006, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Digwadih colliery of M/s Tisco in dismissing Sh. Bharat Singh, Belt Operator from the Services of the company vide letter dated 04.07.2005 is fair and justified? If not, to what relief is the concerned workman entitled?"

2. The case is received from the Ministry of Labour on 03.07.2006, both parties are noticed. The Union/workman files their written statement on 10.07.2006 and thereafter rejoinder and document. Since it is a case of dismissal, Preliminary enquiry was conducted, this Tribunal held the disciplinary enquiry conducted by the management before, dismissal of the workman was not fair and proper vide the

tribunal's order dt. 3.5.2010. But the management did not challenge the said order and the said order became final.

3. The management's case is the workman in the present reference, attended in duty late, when he was asked by his authority to clean the belt, he reacted saying that was not his duty and there was altercation. The workman handled his authority and the matter was reported to the in charge, and charge sheet was issued. But the case of the workman is that, inside the mine, his authority assaulted him on false pretext and fabricated a case against him to adjust his own man in his place. Hence from the evidence of both sides, there was assault either to the workman or to his authority vice versa.

4. In the present case all MWs stated regarding the erratic attitude of the workman. But the workman alleged that he was assaulted by rest three.

5. It has been stated by the MW-1 that, the duty of the workman was to clean the belt to which the workman dispute. The MW-1 has stated that he would file document to that effect. But no document to that effect has been filed. There is documentary evidence to show that, on the relevant date the workman went to duty late.

6. MW-2 has also stated that, it is not within his knowledge that whether there is a post of belt cleaner or not. He further says that, there was no other witness to corroborate his evidence. Of course MW-2 alleged regarding misbehavior and assault to him.

7. MW-3 has stated that, there is a designation of a belt cleaner. If there is a belt cleaner post, he is to clean the belt not the workman. Therefore it can not be said that, there was dereliction of duty by the workman.

8. From the evidence of the parties, it is clear that there was altercation. Which is highly objectionable and undesirable. But on the said ground removal of the workman from service is harsh, specially when the departmental enquiry conducted by the management held unfair and improper, and the said order became final.

9. Therefore the opinion of the Tribunal is to reinstate the workman in duty within two months from the date of publication of the award in the Gazette. The workman is also cautioned to remain within his limit. In this case, there will be continuity of service is awarded.

10. Considering the facts and circumstances, I hold that the action of the management of digwadih colliery of M/S Tisco in dismissing Sh. Bharat Singh, Belt operator from the service of the company vide letter dated 04.07.2005 is not fair and justified. Hence the workman is reinstate in service with continuity of service but without any back wages.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 जुलाई, 2013

कांआ 1715.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स ई सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 1, धनबाद के पंचाट (संदर्भ संख्या 28/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/06/2013 को प्राप्त हुआ था।

[सं एल-20012/105/2009-आईआर (सीएम-1)]

एम के सिंह, अनुभाग अधिकारी

New Delhi, the 10th July, 2013

S.O. 1715.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2010) of the Central Government Industrial-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 11/06/2013.

[No.L-20012/105/2009-IR (CM-I)]

M.K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD.

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A)
OF I.D. ACT, 1947

Ref. No. 28 of 2010

Employers in relation to the management of Nirsa Colliery
M/S ECL

AND

Their workmen.

PRESENT:—SRI RANJAN KUMAR SARAN, Presiding officer

APPEARANCES:

For the Employers.:—Sri. D.K. Verma, Advocate

For the workman. :— Sri D. Mukherjee, Rep.

State:—Jharkhand. Industry:—Coal.

Dated. 28/05/2013

AWARD

By Order No.L-20012/105/2009-IR-(CM-I), dt. 12/03/2010, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"(i) Whether the action of the management of Nirsa Colliery of M/s ECL in not giving proper grade and pay of Engineer (E&M) to Shri A.K. Ganguly, Asstt. Forman is justified and legal? (ii) To what relief the concerned workman is entitled?"

2. The case is received from the Ministry of Labour on 25.03.2010. After notice both parties appeared, the Union/workman files their written statement on 17.06.2010 and after that the management files written statement-cum-rejoinder on 14.10.2011, and respective documents.

3. The claim of the workman is, he is to be given proper grade in the electric engineering department of the management. It is his case that he was appointed as electrical supervisor on 16/17.11.1999. But he demanded to be placed as Supervisor Grade "A" from November 1999. He further submitted that taking his experience the management appointed him as electrical Engineer through various letters between may 2003 to September 2003. It is his claim that, he be regularised as Engineer Grade "A" from 1999 and consequently, Electrical Manager Since 2004.

4. As per the order of the management the workman has been posted as Electrical Supervisor *w.e.f.* 16.11.99. Subsequently the workman was allowed to work in the leave vacancy of one Sri Gorai *w.e.f.* 9.9.2003 and subsequently 25.5.2004. Therefore, he claim to be regularised in the said post.

5. It has been admitted by the management that the workman has worked in such capacity. It is submitted that as per the cadre scheme, unless a Forman complete three years as Forman in T&S Grade-B he can not be promoted to E&S Grade A.

6. For the purpose of promotion a regular DPC is to be done and a selected candidate is to be promoted to the higher post. Merely working in a post for a long period, will not give him the place in a higher grade or post.

7. The management also files a decision to that effect, reported in Supreme Court cases (L&S) 264, working in promotional post or an officiating post can not give any right, except there is a promotional order and acceptance of the post.

8. It is further pertinent to mention that the workman did not accept the promotional post for clarity, it is felt proper to extract the entire cross examination of the workman. (WW-1)

"I am not in the post of Electrical supervisor. My designation is Asstt. Forman. I am not doing the job of Electrical supervisor. I have worked as Electrical supervisor from 1999 to 2004. I have get no order to work from supervisor to workman. I get Rs. 35000 per month gross. I do not remember if DPC was held or

not in my case. I was given Electrical supervisor by DPC but it did not accept it. I have get no degree of Electrical Engineer, but I got degree of Electrical supervisor."

9. When the workman refused to joint in the promotional post can not claim higher post merely he served in the said post for a longer period. Therefore the claim of the workman is not acceptable.

10. Considering the fact and circumstance of this case, I held that the action of the management of Nirsa Colliery of M/s. ECL in not giving proper grade and pay of Engineer (E&M) to Shri A.K. Ganguly, Asstt. Forman is justified and legal. Hence the workman is not entitled to any relief.

This is my award.

R.K. SARAN, Presiding Officer.

नई दिल्ली, 10 जुलाई, 2013

का०आ० 1716.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 55/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13/05/2013 को प्राप्त हुआ था।

[सं० एल-20012/647/1997-आई आर (सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th July, 2013

S.O. 1716.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. 55/1998**) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. CCL and their workmen, received by the Central Government on 13/05/2013.

[No. L-20012/647/1997-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT NO. 1, DHANBAD**

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Ref. No. 55 of 1998

Employer in relation to the management of Kargali Coal washery, M/s. CCL

AND

Their workmen

PRESENT: SRI RANJAN KUMAR SARAN, Presiding Officer.

APPEARANCES:

For the Employers : Sri D.K. Verma, Advocate
For the Workman : Sri B.B. Pandey, Advocate
State: Jharkhand Industry: Coal

Dated: 25-04-2013

AWARD

By Order No. L-20012/647/97-IR (C-I), dated 13/08/1998, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the termination from the services of CCL of Sri Bihari Mohato, Operator Gr.-I by the management of Kargali Coal Washery, C.C. Ltd., P.O.-Bermo, Distt.-Bokaro is legal & justified? If not to what relief the workman is entitled?"

2. The case is received from the Ministry of Labour on 01.09.1998. Both parties are noticed. The Union/Workman files their written statement on 17.08.1999 as well as the management files their written statement on 20.12.99. Thereafter rejoinder filed by the workman on 30.11.2000. Document received from the respective parties.

3. The Enquiry held by the enquiry officer found not just and proper by this Tribunal on 09.05.2012. And the order of preliminary point regarding fairness of domestic enquiry has not been challenged by the management and the said order became final.

4. The short point involved in this case is due to continuous absence of the workman was dismissed from service.

5. On scrutiny it is noticed, that the workman has filed a Mercy petition before the A.G.M., Kargali washery i.e. marked as Ext M-3 along with medical certificate i.e. marked as Ext W-1, in which management officers allow him, this proves that the management agree with his illness.

6. The learned counsel for the workman submitted that continuous absence of workman always not international but that may be due to hazardous working condition.

7. Considering the facts and circumstances, I hold that the termination from the service of C.C.L. of Sri Bihari Mahto, Operator Gr.-I is not justified. The workman crossed his retirement age, therefore in the opinion of the Court, the workman be reinstate in the service with continuity of Service of the workman be maintained, he be given 10% of his back wages. The reference answered accordingly.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 जुलाई, 2013

का०आ० 1717.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध 1 में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 98/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29/04/2013 को प्राप्त हुआ था।

[सं० एल-20012/360/1998-आई आर (सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 10th July, 2013

S.O. 1717.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 98/1999) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. CCL and their workmen, received by the Central Government on 29/04/2013.

[No. L-20012/360/1998-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD**

In the matter of a reference U/S 10 (1) (D) (2A) of I.D.
Act, 1947

Ref. No. 98 of 1999

Employer in relation to the management of Kedia OCP of
M/S C.C.L.

AND

Their workmen

PRESENT: SRI RANJAN KUMAR SARAN, Presiding Officer.

APPEARANCES:

For the Employers : Sri D.K. Verma, Advocate
For the Workman : Sri R.N. Ganguli, Advocate
State: Jharkhand Industry: Coal

Dated: 12/04/2013

AWARD

By Order No. L-20012/360/1998-(C-I), dt. 04/06/1999, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Kedla Open Cast Project, M/s. Central Coalfield Ltd. P.O.-Kedla, Distt.-Hazaribagh, in terminating of service of Sh. Anwar Ahmad, Ex-overman w.e.f. 06.01.94 is legal & justified? If not, what relief the concerned workman is entitled to?"

2. The case is received from the Ministry of Labour on 15.06.1999. Both parties are noticed. The workman files their written statement on 09.07.1999 and thereafter rejoinder. The short point to be decided in the case is whether continuous absent of the workman till his dismissal is proper.

3. In this case, the preliminary enquiry held unfair and improper. The said order was not challenged by the management. Though in the show cause of the management, it has been stated that there was also previous long absence of the workman. But that has not been proved by the management. Plea of illness of the workman, though not proved for the single absence, dismissal of the workman is a major penalty.

4. Moreover the dependent of the workman has filed the photocopy of the death certificate of the concerned workman, where the reason of death was due to mental illness. Illness is a good ground of absence. Hence the dismissal of the workman is improper. It is on record, that the workman died in the meantime.

5. Considering the facts and circumstances, I hold that the action of the management of Kedla Open Cast Project of M/s. CCL in terminating the service of Sri Anwar Ahmad, Ex-overman w.e.f. 06.01.1994 is not justified. Hence his service benefits as if he is in service be given to his dependent. But the workman is not entitled to get any back wages.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 11 जुलाई, 2013

का०आ 1718.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 248/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/07/2013 को प्राप्त हुआ था।

[सं० एल-20012/369/2001-आई आर (सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 11th July, 2013

S.O. 1718.—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 248/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 10/07/2013.

[No. L-20012/369/2001-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD**

In the matter of a reference U/S 10 (1) (D) (2A) of I.D.
Act, 1947

Ref. No. 248 of 2001

Employers in relation to the management of South Tisra Colliery of M/s. B.C.C.L.

AND

Their workmen

PRESENT: SRI RANJAN KUMAR SARAN, Presiding Officer.

APPEARANCES:

For the Employers : Sri D.K. Verma, Advocate

For the Workman : Sri R. Ranjan, Advocate

State : Jharkhand Industry: Coal.

Dated: 27/06/2013

AWARD

By Order No. L-20012/369/2001-IR-(C-I), dated 23/11/2001, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether denial to pay sick wages to Sri Umapado Banerjee w.e.f. 28.1.94 to 11.1.95 by the management of South Tisra Colliery BCCL is justified? If not, to what relief is the workman entitled?"

2. The case is received from the Ministry of Labour on 06.12.2001. After notice both parties appeared, the Sponsoring Union/workman files their respective written statement on 28.08.2003, rejoinder and filed their documents. The workman has been examined as WW-1.

3. In the Case the short point involved in the case is whether the workman who was on continuous sick leave, is entitled to the wages as per the half pay leave etc. It is submitted by the management, in paragraph 5 of its written statement that as per the NCWA agreement and as per leave rules, the workman is entitled to half pay leave and connected benefits will not be denied to the workman.

4. This being the situation and considering the facts and circumstances of this case, the workman Sri Umapado Banerjee is entitled half pay leave w.e.f. 28.1.94 to 11.1.95 as per NCWA agreement and leave rules.

The reference answered accordingly.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 11 जुलाई, 2013

का०आ० 1719.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 228/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/07/2013 को प्राप्त हुआ था।

[सं० एल-20012/279/1999-आई आर (सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 11th July, 2013

S.O. 1719.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 228/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 10/07/2013.

[No. L-20012/279/1999-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10 (1) (D) (2A)
OF I.D. ACT, 1947

Ref. No. 228 of 2001

Employers in relation to the management of Block II, Area of M/s. B.C.C.L.

AND

Their workmen

PRESENT: SRI RANJAN KUMAR SARAN, Presiding Officer.

APPEARANCES:

For the Employers : Sri U.N. Lall, Advocate
For the workman : None
State: Jharkhand Industry: Coal

Dated: 28/06/2013

AWARD

By Order No. L-20012/279/1999-IR (CM-I), dated 10/10/2001, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of National Coal Workers Congress from the management of Block II area of M/s. Bharat Coking Coal Limited that Shri Bhim Mahato, Pump Operator should be regularised as Store issue Clerk w.e.f. 25.10.97 is proper and justified? If so, to what relief is the workman entitled?"

2. The case is received from the Ministry of Labour on 06.11.2001. After notice both parties are appeared, the Union/workman files their written statement on 29.01.2003. Thereafter the management filed their written statement-cum-rejoinder on 28.03.2003, witnesses on behalf on the workman and the management examined. The short point involved in this case, as to whether the workman who was working as pump operator, under the management can be regularised as clerk in the said organization.

3. For deciding the aforesaid dispute the evidence of the workman *i.e.* his cross examination is extracted below:—

"I was appointed on 31.01.1973 as pump operator. Presently I am in Cat-VI as pump operator. I was non-matric on 20.01.88. My reference was rejected by the Ministry. The matter was referred as per order of the Hon'ble High Court. There is separate cadre scheme for pump operator and clerical cadre. I cannot say if pump driver was regularised in clerical grade. I was transferred from Benedih Colliery to Block-II O.C.P. as pump operator. It is not a fact that I have not worked as store issue clerk. It is not a fact that my demand is baseless."

4. After perusal of the document the workman has passed pravesika examination from Hindi Bidyapith, in 1996. He has not having matriculation certificate prior to 1996 as per Ext. M-4. It is cleared that the workman has not requisite qualification on 25.10.87.

5. Moreover it is submitted by the management, from the cadre of pump operator, one cannot be regularised in the post of clerk.

6. Considering the fact and circumstances of this case, I hold that the demand of National coal workers congress from the management of Block II Area of M/s. BCCL that Shri Bhim Mahato, Pump Operator should be regularised as store issue clerk w.e.f. 25.10.87 is not proper and justified. Hence the workman is not entitled to any relief. The reference answered against the workman.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 11 जुलाई, 2013

का०आ० 1720.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 60/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/07/2013 को प्राप्त हुआ था।

[सं० एल-20012/90/2009-आईआर(सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 11th July, 2013

S.O. 1720.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workman, received by the Central Government on 10/07/2013.

[No. L-20012/90/2009-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1) DHANBAD

LOK-ADALAT

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A)
OF I.D. ACT, 1947.

Ref. No. 60 of 2009

Employers in relation to the management of Sijua Colliery
of M/s. Tata Steel Ltd.

AND

Their workmen

PRESENT: SRI RANJAN KUMAR SARAN, Presiding
Officer

APPEARANCES:

For the Employers : Sri D.K. Verma, Advocate

For the workman : None

State : Jharkhand Industry: Coal
Dated 19/6/2013

AWARD

By Order No. L-20012/90/2009-IR (CM-I),
dt. 27/10.2009, the Central Government in the Ministry of
Labour has, in exercise of the powers conferred by clause
(d) of sub-section (1) and sub-section (2A) of Section 10 of
the Industrial Disputes Act, 1947, referred the following
disputes for adjudication to this Tribunal:

SCHEDULE

"1. Whether the action of the management of Sijua

Colliery of M/s. Tata Steel Ltd. In dismissing
Shri Dharmendra Paswan, Miner from the services of
the company w.e.f. 21.04.2008 justified and legal?
(ii) To what relief is the workman concerned entitled?"

2. After receipt of the reference, parties are noticed.
Though they appeared for certain dates, subsequently did
not take any interest in the case and continuously remained
absent. It is presumed that there is not dispute between
the parties. Hence No Dispute Award is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 11 जुलाई, 2013

का०आ० 1721.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 116/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/07/2013 को प्राप्त हुआ था।

[सं० एल-20012/40/1991-आईआर(सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 11th July, 2013

S.O. 1721.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 116/1991) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 10/07/2013.

[No. L-20012/40/1991-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

LOK-ADALAT

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A)
OF I.D. ACT, 1947.

Ref. No. 116 of 1991

Employers in relation to the management of Sudamdih Shaft
Mine of M/s. BCCL

AND

Their workmen

PRESENT: SRI RANJAN KUMAR SARAN, Presiding
Officer

APPEARANCES:

For the Employers: Sri U.N. Lall, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated 18/6/2013

AWARD

By Order No. L-20012/40/91-IR (CM-I), dt. 25/07/91, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"1. Whether the action of the management of Sudamdih Shaft Mine of M/s. BCCL, P.O. Sudamdih, Distt-Dhanbad is dismissing Shri Deoraj from the services of the company is justified? If not for what relief is workman entitled?"

2. After receipt of the reference, parties are noticed. Though they appeared for certain dates, subsequently did not take any interest in the case and continuously remained absent. It is presumed that there is not dispute between the parties. Hence No Dispute Award is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 11 जुलाई, 2013

का.आ. 1722.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद के पंचाट (संदर्भ संख्या 83/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10/07/2013 को प्राप्त हुआ था।

[सं० एल-20012/144/1989-आईआर(सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 11th July, 2013

S.O. 1722.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/1991) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 10/07/2013.

[No. L-20012/144/1989-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A)
OF I.D. ACT.

Ref. No. 83 of 1991

Employer in relation to the management of Kenduadih Colliery P.B. Area, M/s. BCCL

AND

Their workmen

PRESENT : SRI RANJAN KUMAR SARAN,
Presiding Officer

APPEARANCES:

For the Employers : Sri D.K. Verma, Advocate

For the workman : None

State : Jharkhand : Industry: Coal

Dated 28/6/2013

AWARD

By Order No. L-20012/144/89-IR (CM-I), dt. 27/08/1991, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of the Bihar Colliery Mazdoor Sabha, that Sri Harak Dusadh and 15 others shows in the Annexure, who were dismissed from service in the year 1969 by their erstwhile employers, the Raneebunga Coal Association Ltd., be taken back in service by the management of Kenduadih Colliery of M/s. BCCL is justified? If so, to what relief are these persons entitled?"

ANNEXURE

1. Shri Harak Dusadh—UG Trammer
2. Sri Chamari Singh—Line Mazdoor
3. Sri Sitaram Dusadh—Fan Operator
4. Parameshwar Dusadh—On Setter
5. Sri Ram Dewar Chamar—Miner
6. Sri Nirmal Sah—Box man
7. Sri Sarju Singh—Ug Haulage Khalasi
8. Sri Ram Khumbar—Miner
9. Sri Bigan Mahato—Miner
10. Sri Deo Chamar—Miner
11. Sri Dawarath Kahar—Miner
12. Sri Faudar Sah—Tyndel
13. Sri Dudhnath Kahar—Miner
14. Sri Lilu Rabidas—Miner
15. Sri Khiru Sah UG—Trammer
16. Sri Prasadi Tanti—Engine Khalasi

2. After receipt of the reference the parties are noticed, Though they took steps for certain dates, subsequently did not appears nor take any interest in the case. It is presumed that the disputes between parties have been resolved in the meantime. Hence no Dispute Award is passed.

R.K. SARAN, Presiding Officer

नई दिल्ली, 12 जुलाई, 2013

का.आ. 1723.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय -II, चंडीगढ़ के पंचाट (संदर्भ संख्या 1066/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/07/2013 को प्राप्त हुआ था।

[सं एल-12012/96/2004-आईआर(बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th July, 2013

S.O. 1723.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (**Ref. No. ID No. 1066/2005**) of the Central Government Industrial Tribunal-cum-Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Punjab & Sindh Bank, and their workman, which was received by the Central Government on 12/07/2013.

[No. L-12012/96/2004-IR(B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT: SRI A.K. RASTOGI, Presiding Officer

Case No. I.D. No. 1066/2005

Registered on 20/9/2005

Sh. Dhan Bahadur Thapa S/o Late Sh. Man Bahadur,
C/o Sh. Khema Nand, 2597, Sector 27C, Chandigarh.

....Petitioner

VERSUS

The Zonal Manager, Punjab and Sind Bank, Zonal
Office, Sector 17B, Chandigarh.

.....Respondents

APPEARANCES:

For the workman : Sh. M.P.S. Mann Adv.

For the Management : Sh. J.S. Sathi, Advocate

AWARD

Passed on 28.6.2013

Central Governemnt vide Notification No. L-20012/96/2004-IR (B-II), dtd. 03/09/2004, by exercising its powers under section 10 sub-section (1) Clause (d) and sub-section (2A) of the Industrial Disputes Act, 1947, (hereinafter referred to as 'Act' referred the following Industrial disputes for adjudication to this Tribunal:

"Whether the action of the management of Punjab and Sind Bank in terminating the services of Sh. Dhan Bahadur Thapa S/o Sh. Man Bahadur, Ex-Peon (Daily-Wage Basis) w.e.f. August, 2001 without any notice and without any payment of retrenchment compensation in violation of statutory provisions of Section 25F, G and H of the ID Act, 1947 is just and legal? If not, what relief the concerned workman is entitled to and from which date?"

As per claim statement the workman had been employed as peon on daily wage basis in Punjab and Sind Bank Sector 22B, Chandigarh w.e.f. 8.7.1997. He worked in the said branch up to 30.8.1998. Thereafter he was transferred to extension counter Harkrishan Public School, Sector 40C, Chandigarh w.e.f. 24.7.1998 where he worked up to 24.11.1998 and thereafter he was transferred to Sector 26, Chandigarh branch w.e.f. 25.11.1998. He was being paid through voucher and up to 11.2.1999 the vouchers were made in his name but thereafter the Branch Manager stopped paying the workman through vouchers in his name and instead he was paid in different fictitious names mentioned in the vouchers under the threat of termination of his service. He worked on the post of peon without any break from 18.7.1997 till August 2001 when his services were abruptly terminated by the Branch Manager by a verbal order. After the termination of his service one person named Singara Singh was engaged as peon. According to the workman he had completed more than 240 days of service without any break in the immediately preceding year of his termination. Yet his services were terminated without any notice or notice pay and without paying any retrenchment compensation. The workman has alleged the violation of Section 25G and 25H of the Act also.

The claim was contested by the respondent. It was stated that engagement of the workman was not in accordance with the procedure of making regular appointments and nor by a competent authority and as such he is not entitled to the protection under Section 25F of the Act. He has no right to continue in the services. He had been engaged as casual labour to meet the exigencies of service. It was denied that he had been transferred from one branch to another. According to management after

relieving from one branch the claimant approached the manager of another branch where he was engaged afresh and there was no question of his transfer from one branch to the other. Service rendered in different branches cannot be clubbed together to determine continuous length of service. It was denied that wages were paid to him in different fictitious name and he worked in continuity. According to the management the provisions of the Act are not attracted in the case.

A rejoinder was filed by the workman to say that his employment was within the knowledge of Zonal Office, Chandigarh and his employment was with the consent and connivance of the Zonal Office. Therefore the plea that the appointment of the workman was not through proper procedure is mischievous and misleading. As he has put in more than 240 days continuous service in the immediate preceding year of his termination the provisions of Section 25F of the Act are clearly attracted. He has put in more than four years' continuous service. The management cannot take advantage of its own wrong. It is for the management to apply proper procedure for making appointments. The plea of transfer from one branch to another was reiterated but it was made clear that the transfers were on verbal orders.

In support of its case workman examined himself while on behalf of management R.S. Paul, Senior Manager, Punjab and Sind Bank Sector 26 was examined.

The workman has also filed register of general charges and vouchers in support of his case and the same has been verified by the management.

I have heard the learned counsel for the parties and perused the evidence on record. As it is clear from the evidence on record and is also admitted to the management, the workman was in the employment of the bank. It is also not disputed that his appointment was not in accordance with the rules. But I do not agree with the argument of the learned counsel for management that for this reason he is not entitled to the protection of Section 25F of the Act. A workman irrespective of the fact whether he has been appointed lawfully or unlawfully is entitled to the protection of Section 25F of the Act; if he has completed 240 days continuous service in 12 calendar months preceding the date of his termination.

In this case it is important to see whether the workman has completed 240 days service in a year preceding the date of his termination. It is also to be seen whether his services were terminated in August 2001; because as per claim statement he was being paid through vouchers and vouchers were being made in his name up to 11.2.1999. He alleges that thereafter he was made to sign on the vouchers prepared in fictitious names. It has been denied by the management. I am of the view that the plea of the workman in this regard cannot be accepted. If he signed the vouchers in fictitious names, he indulged himself in wrongful acts and he cannot take advantage of his own wrongs. His

engagement with the bank can be accepted up to 11.2.1999 only and the termination of his services w.e.f. August 2001 cannot be accepted.

Now he has taken the plea that he has been transferred from one branch to another but the management has denied. According to management he was a casual worker engaged to meet the exigencies and after relieved from one branch he was engaged afresh in the other branch on his request. The argument of the learned counsel for management is that his services in different branches cannot be clubbed together. Learned counsel for workman though has argued in favour of the workman but he failed to prove the transfer of the workman from one branch to another. As the workman was not a regular appointee hence his plea to transfer from one branch to another does not appear probable also. I agree with the learned counsel for the management that he had been engaged afresh in different branch after being relieved from one branch.

The Hon'ble Supreme Court in Haryana Urban Development Authority Vs. Om Pal 2007 II LLJ 1030 held that once two establishments are held to be separate and distinct having different cadre strength of the workman, if any, we are of the opinion that the period during which the workman was working in one establishment will not inure to his benefit when he was recruited separately in other establishment, particularly when he was not transferred from one sub-division to the other. In Union of India Vs. Jummasha Diwan 2006 (III) FLR 895 the Hon'ble Supreme Court held that when casual employee is employed in different establishments, may be under the same employer, having different administrative set up, the concept of continuous service cannot apply. His recruitment in the said establishment constitute a fresh employment every time.

From the claim statement it is clear that lastly w.e.f. 25.11.1998 to 11.2.1999 the workman was serving in Sector 26 branch of the bank. His service was not of more than 3 months even in the branch. Obviously he did not complete 240 days service in a year before his termination on 11.2.1999. Obviously he is not entitled to the protection of Section 25F of the Act.

The learned counsel for workman relying on the judgement of Hon'ble Punjab and Haryana High Court in CWP No. 17931 of 2012 decided on 2.11.2012 and CWP No. 18154 of 2007 decided on 26.5.2010 has submitted that the workmen will not claim back wages if he is reinstated. But since in this case the workman is not entitled to protection of Section 25F of the Act itself hence there is no question of his reinstatement.

On the basis of the aforesaid discussion I am of the view that neither the services of the workman were terminated w.e.f. August 2001 as alleged by him nor he was entitled to protection of Section 25F of the Act.

There is no evidence of any appointment subsequent

to the termination of the workman or of retaining any person junior to workman at the time of his termination hence the violation of Section 25G and 25H of the Act is also not there.

On the basis of the above going discussion it is therefore held that in terminating the service of the workman the provisions of Section 25F and 25G and 25H of the Act were not violated and his termination is just and legal. He is not entitled to any relief. The reference is answered against him. Let hard and soft copies of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 12 जुलाई, 2013

का.आ. 1724.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/92/01) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/04/2013 को प्राप्त हुआ था।

[सं. एल-12012/238/99-आईआर (बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th July, 2013

S.O. 1724.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award No. (CGIT/LC/R/92/01) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 26.04.2013.

[No. L-12012/238/99-IR(B-II)]

SUMATI SAKALNI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/92/2001

SHRI MOHD. SHAKIR HASAN, Presiding Officer

Shri Santosh Rajpur,
S/o Shri Bhaiyalal Rajpur,
Acharya Vinoba Bhawe Ward,
House No. 2274,
Baldikori ki dafai Tiraha,
Behind Sharda Bhawan East,
Ghamapur, Jabalpur.

...Workman

Versus

The Regional Manager,
Central Bank of India,
Regional Office, 601,
Napier Town, Jabalpur.

...Management

AWARD

Passed on this 8th day of February, 2013

1. Present reference is received by this officer as per letter dated 23.3.2001 from Government of India, Ministry of Labour, New Delhi. As per vide Notification No. L-12012/238/99-IR(B-II) the schedule, the reference is directed for adjudication of termination of the workman Shri Santosh Rajput. After notice, workman submitted his statement of claim on 12.3.2002 stating the facts challenging legality of his termination. Workman prayed for reinstatement. The management filed reply/Written statement on 5-12-2004.

The reference is pending for evidence. Workman filed affidavit of his evidence on 16-11-2008. He has not been cross-examined. The case was fixed for evidence. Workman submitted application for taking case on today's board. The workman has filed copy of appointment order dated 29-1-2013. As per conditions, the workman was directed to attend the Bank on 11-2-2013. In above matter, workman submits that he desires to withdraw the proceedings. He would not claim back wages. That his Advocate is not attending the proceedings since 5-6 years as the workman could not pay his fees. In support of his identity, the workman shows copy of letter addressed to Manager of Bank dated 23-11-2012 by which he has undertaken to withdraw the proceedings. The xerox copy is kept for record. Considering above submissions, it is clear that as the workman has been appointed by the Bank, he is not desiring to prosecute the proceedings. Therefore, I pass the following order:—

"Award is disposed off for non-prosecution."

R. B. PATLE, Presiding Officer

नई दिल्ली, 12 जुलाई, 2013

का.आ. 1725.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/126/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/04/2013 को प्राप्त हुआ था।

[सं. एल-12012/201/98-आईआर(बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 12th July, 2013

S.O. 1725.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award No. (CGIT/LC/R/126/99) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 26.04.2013

[No. L-12012/201/98-IR-(B-II)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/126/99

SHRI R.B. PATLE, Presiding Officer

Smt. Anita Dagar,
w/o Ashok Dagar,
Ward No. 23, Kurele Niwas,
Itarsi, Hoshangabad (MP) ...Workman

Versus

Zonal Manager,
Bank of India,
Zonal Officer, M.P. Zone,
Bank of India Bhawan,
Jail Road, Arera Hills,
Bhopal (MP) ...Management

AWARD

Passed on this 3rd day of April 2013

1. As per letter dated 23-3-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/201/98/IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Zonal Manager Bank of India, Bhopal in terminating the services of Smt. Anita Dagar w.e.f. 4-6-98 is justified? If not, what relief the workman is entitled for?"

2. After service of notice, workman submitted statement of claim at Page 2/1 to 2/2. The case as per Statement of Claim is that since 1988 she was continuously worked as sweeper in Bank of India Itarsi Branch. She was cleaning latrine, bathroom, sweeping etc. She was paid Rs. 225 per month for above work. She was also paid bonus. Her services were discontinued by management from 4-6-97. Secondly she was suffering hardship in life. She further submits that she was paid only Rs. 225 per month. Therefore she was working temporarily in Municipal Corporation, Itarsi for managing expenses of her family. That she was doing cleaning and sweeping work continuously for 15 years. Instead of regularizing her

services, IInd party acted discriminately and regularized Shri Goswami as sweeper. Her services were illegally discontinued from 4-6-97. She also submits that her father-in-law was doing cleaning work in the Bank since the branch was opened. In spite of appointment of Goswami, cleaning work was done by him. That she had completed 240 days continuous service and thereby acquire status of regular employee. That she possess eligibility for appointment as sweeper. Ist party workman prays for her appointment as sweeper.

3. IInd party submitted Written Statement at Page 8/1 to 8/2. Preliminary issue is raised that Ist party is not workman under Section 2(s) of the I.D. Act. That Ist party workman is working with Municipal Corporation, Itarsi 1988 for 7 1/2 years per day. Ist Party workman is paid Rs. 1468/- per month by Municipal Corporation, Itarsi. She was sanctioned loan of Rs. 15,000 for doing business of readymade garments. IInd party submits that workman was never appointed by Bank as regular sweeper. The Branch had engaged her service as casual labor on day to day basis for cleaning urinals and W.C. toilets. For this job requires approximate 10 minutes time. Workman was not engaged on regular service. The bonus was paid on basis of number of working days. That the contention of applicant workman are misconceived, she has not completed 240 days continuous service. Her appointment was as per exigency on reimbursement basis. The applicant workman has no claim for employment in Bank on priority whenever recruitment takes place. IInd party prayed for rejection of relief prayed by workman.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each for the reasons as below:—

- (i) Whether the action of management of Zonal Manager Bank of India, Bhopal in terminating the services of Smt. Anita Dagar w.e.f. 4-6-98 is justified?
In Affirmative.
- (ii) If not, what relief the workman is entitled to?"
Workman is not entitled to reliefs prayed by him.

REASONS

5. The reference relates to whether termination of Ist party workman is legal and proper. Ist party workman claims that she was continuously working as sweeper in Bank. She had completed 240 days service. However her statement of claim is silent with respect to violation of Section 25-F of I.D. Act. In her statement of claim, Ist party workman had pleaded that as she was paid Rs. 225/- per

month, she has also temporarily worked in Municipal Corporation, Itarsi. IInd party has also pleaded that the Ist party was working as sweeper in Municipal Corporation and she was paid Rs. 1468/- per month. IInd party has raised objection that Ist party is not workman. However the pleadings of IInd party is silent about Ist party workman was doing any managerial or supervisory work to exclude her claim from Section 2(s) of I.D.Act. Therefore I do not find substance in said contention of IInd party.

6. Turning to the evidence, Ist party workman filed affidavit of evidence at page 16. She has stated that she has worked with IInd party from 1988 to June 1997 as sweeper. She was paid wages in cash and bonus. She was doing work of sweeper, cleaning floor, toilet and other works. She has also stated that because of lesser wages paid to her, she was working in Municipal Corporation, Itarsi for support of her family. In her cross-examination, she has stated that no written appointment order was given to her. Her name was not sponsored from Employment Exchange. However she says that interview was held. She claims ignorance about attendance register maintained in the Bank, whether her name is included in said register. That she was working on daily wages, wages were paid in cash. She denied that she was working on daily wages at Municipal Corporation, Itarsi. In next question, she admits that the portion of his statement of claim and affidavit about working on daily wages at Municipal Corporation, Itarsi is wrong. Her evidence is silent about violation of Section 25-F of I.D.Act. The evidence of management's witness Shri P.B. Wani filed at Page 19/1 to 19/2 covers contentions of IInd party in the Written Statement that Ist party workman had not completed 240 days continuous service preceding her discontinuance. In his cross-examination, the witness of the management says that the bonus sheets documents M-2 and M-4 are produced. Merely from payment of bonus, it is difficult to hold that workman has completed 240 days continuous service. The written notes of arguments are submitted on behalf of workman, it is contended that bonus was paid for 365 days. Workman has not pleaded in her statement of claim or affidavit of evidence she had completed 240 days continuous service in IInd party Bank. When she has stated in her statement of claim and affidavit of evidence that she was also working temporarily in Municipal Corporation, Itarsi, it is obligatory on the part of workman to give particulars of working days in IInd party Bank. In absence of such evidence, it is difficult to hold that workman completed 240 days continuous service. The evidence on record clearly shows that procedure for recruitment was not followed, any advertisement was not given. Name was not sponsored through Employment Exchange. Ist party doesnot get right for appointment as regular employee in the Bank. Counsel for IInd party has submitted citation.

"In the case of Shri Ajay Kumar Sharma versus

Presiding Officer, Labour Court No. VI and another reported in 2007-I-LLJ-302. Their Lordship of Delhi High Court dealing with casual labour—persons working as driver on daily rated/casual basis. His disengagement did not entitle him to reinstatement or regularization."

"In AIR 2007 Supreme Court 1166. Their Lordship of the Apex Court considering respondent appointed as contract sweeper and attender in State Transport Corporation continued as such for many years. It is held that their services cannot be regularized as their appointments were dehors rules and constitutional scheme of public employment—circular issued by corporation directing appointment of contractual against sanctioned vacancies cannot override Article 16."

"Ratio held in 2002(3) SC.pg-25 Ratio relates of entitlement of workman under Section 25-F of I.D.Act."

In present case, there is no evidence about completion of 240 days service by workman or violation of Section 25-F of I.D.Act. No such relief is claimed. Ist party workman is not entitled to any relief. The discontinuation of services of Ist party workman is legal as she has not completed 240 days. Workman is not covered under Section 25(b) of I.D.Act. She is not entitled to protection under Section 25-F of I.D.Act. For above reasons, Issue No.1 is answered in Affirmative.

7. In the result award is passed as under:—

- (1) Action of IInd party management in terminating services of workman from 4-6-98 is just and legal.
- (2) Relief prayed by Ist party workman is rejected."

R. B. PATLE, Presiding Officer

नई दिल्ली, 15 जुलाई, 2013

का०आ० 1726.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सी०जी०आई०टी०एल०सी०/आर०/55/09) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2013 को प्राप्त हुआ था।

[सं० एल-12011/143/2008-आईआर(बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 15th July, 2013

S.O. 1726.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award No. (CGIT/LC/R/

55/2009) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of CENTRAL BANK OF INDIA and their workman, which was received by the Central Government on 26.02.2013.

[No. L-12011/143/2008-IR-(B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/55/09

Shri Mohd. Shakir Hasan, Presiding Officer

General Secretary,
Pratarit Karmachari Kalyan Manch,
Central Office, F-1, Karmabhumi,
Tripti Vihar,
Indore Road, UjjainWorkman

Versus

The Regional Manager,
Central Bank of India,
Regional office, Burhar Road,
Ahuzza Market complex,
ShahdolManagement

AWARD

Passed on this 14th day of February 2013

1. Under letter dated 27-3-2009 from Government of India, Ministry of Labour, New Delhi, present dispute is referred. The dispute under reference relates to:

"Whether the action of the management of the Regional Manager, Central Bank of India, Shahdol (MP) through its branch in terminating the services of Shri Sandeep Kumar Mishra, Ex. Peon-cum-Sweeper w.e.f. December 2006 is legal and justified? What relief the concerned workman is entitled to and from which date?"

2. After receipt of dispute and notice issued to the parties, Ist party workman submitted statement of claim on 22-4-2009. It is his case that he completed 240 day's service. His services are terminated without notice under Section 25-F of I.D. Act. He prayed for reinstatement with back wages.

3. The management filed Written Statement on 22-3-11 opposing the claim of the workman. The workman filed affidavit of his evidence on 2-4-2011 along with documents.

4. Today Ist party workman submitted application. It is submitted that he is not desiring to prosecute his claim under reference. Reasons are given that as fresh recruitment is undertaken by the Bank and in case of appointment, Ist party workman would not prosecute his claim. The Ist Party workman is identified by Advocate Pramod Kumar Dwivedi by filing vakalatnama.

5. In pursuance of above, the dispute under reference needs to be disposed as Ist party workman is not prosecuting the same. Therefore reference is disposed off.

R. B. PATLE, Presiding Officer

नई दिल्ली, 17 जुलाई, 2013

का०आ० 1727.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 353/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/07/2013 को प्राप्त हुआ था।

[सं० एल-12012/196/2002-आईआर(बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 17th July, 2013

S.O. 1727.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. ID No. 353/2005) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab and Sind Bank and their workman, which was received by the Central Government on 17.07.2013.

[No. L-12012/196/2002-IR(B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**IN THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH**

PRESENT: SRI A.K. RASTOGI, Presiding Officer.

1. Case No. I.D. 351/2005
Registered on 16.8.2005
Sh. Prem Singh Rawat S/o Sh. Madan Singh,
1082 F, Sector 7B, Chandigarh.
2. Case No. I.D. 353/2005
Registered on 16.8.2005
Shri Jageshwar Singh, S/o Sh. Balli Ram,
House No. 3714, Sector 22-C,
Chandigarh.

....Petitioners

Versus

The Zonal Manager, Punjab and Sind Bank, Zonal Office,
Sector 17B, Chandigarh.

....Respondent

APPEARANCES:

For the workmanShri M.P.S. Mann Adv.

For the ManagementSh. J.S.Sathi Adv.

AWARD

Passed on June 28, 2013

Central Government Vide Order No. 12012/179/2002 [IR(B-II)] dated 24.2.2003 and Order No. 12012/196/2002 [IR(B-II)] dated 16.4.2003. In exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of Industrial Disputes Act, 1947 (in short 'Act') has referred the following Industrial disputes respectively for adjudication to the Tribunal:—

ID No. 351/2005

"Whether the action of the management of Punjab and Sind Bank in terminating the services of Sh. Prem Singh S/o Sh. Madan Singh, Ex-Peon (Daily Wage Basis) w.e.f. 31.12.2001 without any notice and without any payment of retrenchment compensation is just and legal? If not, what relief the concerned workman is entitled to and from which date?"

ID No. 353/2005

"Whether the action of the management of Punjab and Sind Bank in terminating the services of Sh. Jageshwar Singh, Ex-Peon (Daily Wage Basis) w.e.f. 1.1.2002 without any notice and without any payment of retrenchment compensation in violation of statutory provisions of Section 25F of the I.D. Act, 1947 is just and legal? If not, what relief the concerned workman is entitled to and from which date?"

In the above references common question of law and fact of the legality of the termination of the services of the workmen in violation of Section 25F of the Act is involved, hence they are being decided by this common award.

As per claim statements workman Prem Singh of ID No. 351/2005 w.e.f. 4th July, 2000 and Jageshwar Singh of ID No. 353/2005 w.e.f. 15.3.2000 had been employed by the bank on daily wages as casual labour. Both the workman continuously worked up to 31.12.2001 when their services were abruptly terminated by the Branch Manager orally on the ground of directions from Zonal Office to terminate the services of casual labour and other temporary staff. The case of the workmen is that they had completed more than 240 days of service without any break in the immediate preceding year and their services had been terminated in

violation of Section 25F of the Act. They had also stated in claim statement about the employment of one Kamal after the termination of their services and they have alleged the violation of Section 25G and 25H of the Act also.

The claims were contested by the respondents and it was stated that the workmen had been engaged by Branch Manager without following any procedure and being a backdoor entry they do not acquire any right to continue in service and they are not entitled to the protection of Section 25F of the Act. They had been engaged as casual labour only to meet the exigencies. The provisions of the Act are not applicable in the cases of workmen. Appointment of any other person after the termination of the workmen was also denied by the management.

Workmen examined themselves in their respective cases and on behalf of the management Balkar Singh was examined. Workmen in their cases filed photocopies of documents to prove their employment with the bank. The management has admitted the documents placed on record.

I have heard the learned counsel for the parties and perused the evidence on record. It is not disputed that the workmen were in the employment of the respondent. From the documents available on record it is also proved that the workmen were in the employment of the bank for the alleged period. Learned counsel for workmen submitted that from documents available on record it is clearly proved that the workmen had worked more than 240 days in the bank in the 12 calendar months preceding the date of termination and admittedly their services were terminated without following the procedure provided in Section 25F of the Act.

Learned counsel for the management argued that since the appointment of the aforesaid workmen was not according to law and rules hence, they are not entitled to the protection of Section 25F of the Act and termination of their services is not retrenchment.

I do not subscribe to the view of the learned counsel for the management. In *Srirangam Cooperative Urban Bank Limited Versus Labour Court Madurai* 1996(2) LLJ 216 where the workman was appointed as a temporary clerk by the bank, in defiance of its rules and regulations, the termination of his service was held to be retrenchment in view of the wide amplitude of language of the definition of 'retrenchment', by a Division Bench of Madras High Court. The Hon'ble Court held that whether the appointment was made in accordance with the law or not, does not make any difference, and what is of relevance is the fact of employment and not the legality or otherwise, of it.

Similarly, a Division Bench of Madhya Pradesh High Court in *Rajesh Kumar Versus State of Madhya Pradesh* (1994) 2 LLJ 320 held that termination of the employment of a probationer or of an invalidly appointed worker will be a retrenchment because an invalid appointment is not one of

the exceptions to the provision of the main definition of retrenchment.

Accordingly I am of the view that the workmen are entitled to the protection of Section 25F of the Irrespective of the fact that they have not been appointed as per recruitment rules. However they must qualify for the protection of Section 25F of the Act. For the protection of Section 25F of the Act it is necessary that they should have completed 240 days service during one year preceding the date of their termination. The learned counsel for management is not in a position to dispute the fact which is evident from the evidence on record. I am therefore of the view that workmen are entitled to the protection of Section 25F of the Act and as their services were terminated without complying the provisions of Section 25F of the Act, the termination is void ab initio.

So far as the relief is concerned the learned counsel for workmen relying on the judgment of the Hon'ble Punjab and Haryana High Court in CWP No. 17931 of 2012 Zonal Manager, Punjab and Sind Bank Vs. Roshan Lal and Another decided on November 02, 2012 and in CWP No. 18154 of 2007 Baljit Singh Vs. The Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court decided on May 26, 2010 requested that the reinstatement be granted with past service benefits and the workmen will forego the back wages. I find the argument of the learned counsel for workmen quite reasonable. It is therefore held that the action of the management in terminating the services of the workmen is not legal and justified. The workmen Prem Singh of ID No. 351/2005 and Jageshwar Singh of ID No. 353/2005 are entitled to reinstatement with continuity of service but without back wages. Management is directed to take them back in service within one month of receiving the copy of the award. A copy of the award be placed on the record of ID No. 351/2005 and 353/2005 each. Hard and soft copies of the award be sent to the Central Government and one copy of the award be sent to the District Judge Chandigarh for information and further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 17 जुलाई, 2013

का.आ. 1728.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर, कोल डाम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट एण्ड अदर्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 74/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/06/2013 को प्राप्त हुआ था।

[सं एल-42012/112/2010-आईआर (डीयू)]

सोम नाथ, अनुभाग अधिकारी

New Delhi, the 17th July, 2013

S.O. 1728.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2010) of the Central Government Industrial Tribunal cum Labour Court-II, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The General Manager, Kol Dam Hydro Electric Power Project & others and their workman, which was received by the Central Government on 28.06.2013.

[No. L-42012/112/2010-IR (DU)]

SOM NATH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: Shri A.K. RASTOGI, Presiding Officer

Case No. I.D. 74/2010

Registered on 26.10.2010

Sh. Sanjay Kumar, S/o Sh. Khazana Ram, Village & PO Dhawal, Tehsil-Sundernagar, Mandi (HP).

....Applicant

Versus

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO, Barmana, Bilaspur.
2. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydro Electric Power Project, Sanjay Sadan, Chhota Shimla.
3. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi.

....Respondents

APPEARANCES :

For the workman	None for workman
For the Management	Sh. VP Singh for respondent No. 1, Sh. HR Sharma for respondent No. 3.

AWARD

Passed on 7.5.2013.

Central Government vide Notification No. L-42012/112/2010 [IR(DU)] dated 29.9.2010, by exercising its powers under Section 10 Sub-Section (1) Clause (d) and Sub-Section 2(A) of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) has referred the following Industrial dispute for adjudication to this Tribunal:—

"Whether the action of the management of M/s AKS Engineers and Contractors, a contractor engaged by NTPC Koldam Hydro Electric Power Project, Bilaspur, in terminating the services of their workman Sh. Sanjay Kumar S/o Sh. Khazana Ram w.e.f. 01/8/2008 is legal and justified? If not, what relief the workman is entitled to?"

As per claim statement Respondent No. 1 M/s NTPC Limited Kol Dam Hydro Electric Power Project (in short NTPC) has been constructing dam at Harmoda. It has engaged Respondent No. 2 M/s Italian Thai Development Private Company Ltd. (in short ITD) for construction work which in turn engaged respondent No. 3 M/s AKS Engineers and Contractors (in short AKS) as sub contractor/petty contractor. The workman had been appointed through respondent No. 3 as unskilled labour on 3.9.2005 and he worked continuously till his retrenchment on 31.7.2008. According to the claimant, respondent No. 1 NTPC was his principal employer. He has alleged the violation of the provisions of Section 25G and 25H of the Act as at the time of his retrenchment the juniors were retained in the service and after his termination fresh hands were appointed without calling him to join. The project is likely to take many years for completion and number of workers engaged in the project is more than 700. The employer was required to take permission from the appropriate Government before retrenching the workman but the employer did not comply the provisions of law in this regard. The employer has sufficient funds and the job is of permanent nature. The claimant is without job. He has prayed for appropriate relief.

Respondent No. 2 AKS did not appear despite sufficient service of notice and the case proceeded against him. Claim was however contested by respondent No. 1 NTPC and respondent No. 3 ITD. NTPC denied that he is the employer of the claimant. According to it, it had engaged ITD for construction of the said dam who had further engaged respondent No. 2 as sub-contractor and the claimant had been appointed by respondent No. 2 AKS. NTPC is not the appointing authority of the claimant and has no concern. It was also stated that the construction work of the project is leading to completion and it is intermittent in nature. Further Kol Dam Hydro Electric Power Project is not an 'industrial establishment' as per law and the claim of the claimant be dismissed.

Respondent No. 3 contested the case to say that the work and status of the respondents as alleged in the claim statement is not denied but the workman had worked with its contractor i.e., Respondent No. 2 intermittently and not continuously. The retrenchment had been made strictly in accordance with the provisions of law on partial completion of work.

Workman failed to appear for his evidence despite several opportunities given to him. Hence his evidence

was closed. Respondent No. 1 and 3 however filed affidavits and examined witnesses.

None appeared for the workman at the time of arguments. I heard the representatives of the respondent No. 1 and 3. From the pleadings of the parties and evidence of HR Sharma representative of Respondent No. 3 it appears that the workman had been employed and terminated by respondent No. 2 AKS Engineers who did not contest the claim, and, AKS Engineers was a sub contractor of respondent No. 3 ITD. The claimant has challenged that his termination is in violation of Section 25G and 25H of the Act. But there is no evidence in support of the alleged violation. Hence, the termination of the service of the workman cannot be termed as illegal or unjustified. The reference is therefore answered against the claimant. Let two hard copies and one soft copy of the award be sent to the Central Government as per the directions of the Central Government.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 17 जुलाई, 2013

का०आ० 1729.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर, कोल डाम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट एंड अदर्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं०-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 7,10, 61, 62, 63 और 72/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.06.2013 को प्राप्त हुआ था।

[सं० एल-42012/04, 05, 66, 67, 68,

114/2010-आईआर(डीयू)]

सोम नाथ, अनुभाग अधिकारी

New Delhi, the 17th July, 2013

S.O. 1729.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 7, 10, 61, 62, 63 and 72/2010) of the Central Government Industrial Tribunal cum Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of The General Manager, Kol Dam Hydro Electric Power Project & others and their workman which was received by the Central Government on 28.06.2013.

[No. L-42012/04, 05, 66, 67, 68 and 114/2010-IR(DU)]

SOM NATH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SRIA.K. RASTOGI, Presiding Officer

1. Case No. ID No. 7/2010
Registered on 4.5.2010.
Sh. Sada Ram S/o Sh. Daulat Ram, VPO Bahot Kasol, Tehsil and District Bilaspur (HP), Bilaspur.
2. ID No. 10/2010
Registered on 4.5.2010.
Sh. Mast Ram, S/o Sh. Majnu Ram, Village Kangar, PO Chambi, Tehsil Sundernagar, Mandi.
3. ID No. 61/2010
Registered on 30.8.2010
Sh. Raj Kumar, S/o Sh. Rameshwar Singh, Village Bahru, PO Tatehal, Tehsil Palampur, Kangra.
4. ID No. 62/2010
Registered on 30.8.2010
Sh. Ramesh Kumar, S/o Sh. Dihnu Ram, Village Lachoria, PO Thaki Matti Via Bhalie, Tehsil Salooni, Chamba.
5. ID No. 63/2010
Registered on 30.8.2010
Sh. Jeet Ram S/o Sh. Diwan Chand, Village Abbotoo, PO Bharoli, Tehsil Dehra, Kangra.
6. ID No. 72/2010
Registered on 26.10.2010
Sh. Chanchu Ram S/o Sh. Gurditu Ram, Village and PO Bahol Kasol, Tehsil and District. Bilaspur (HP)

....Applicants

VERSUS

1. The General Manager, Kol Dam Hydro Electric Power Project, NTPC, VPO Barmana, Bilaspur.
2. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydra Electric Power Project, Sanjay Sadan, Chhota Shimla.
3. Project Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayan, PO Slapper, Teh. Sundernagar, Mandi.

....Respondents

APPEARANCES

For the workman	—	None
For the Management—		Sh. VP Singh for respondent No. 1, Sh. H.R. Sharma for respondent No. 3

AWARD

Passed on 6.5.2013

The Central Government vide Notification No. L-42012/4/2010 [IR(DU)] No. L-42012/5/2010 [IR(DU)] both dated 15.4.2010 and No. L-42012/66/2010 [IR(DU)], No. L-42012/67/2010 [IR(DU)] and No. L-42012/68/2010 [IR(DU)] all dated 10-8-2010 and No. L-42012/114/2010

[IR(DU)] 29.9.2010 by exercising its power under Section 10 Sub-Section 1 Clause (d) and Sub-Section (2A) of the Industrial Disputes Act 1947 (in short Act) has referred the following disputes for adjudication to this Tribunal.

OD No. 7/2010

"Whether the action of the management of M/s AKS Engineers and Contractors, a contractor of the management of Koldam Hydro Electric Power Project, NTPC, in terminating the services of their workman Sh. Sada Ram. w.e.f. 13/8/2008 is legal and justified? If not, what relief the workman is entitled to?"

ID No. 10/2010

"Whether the action of the management of M/s AKS Engineers and Contractors, a contractor of the management of Koldam Hydro Electric Power Project, NTPC, in terminating the services of their workman Sh. Mast Ram w.e.f. 13/8/2008 is legal and justified? If not, what relief the workman is entitled to?"

ID No. 61/2010

"Whether the action of the management of M/s AKS Engineers and Contractors, a contractor engaged by NTPC Koldam Hydro Electric Power Project, Bilaspur (HP), in terminating the services of their workman Sh. Raj Kumar w.e.f. 13/8/2008 is legal and justified? If not, what relief the workman is entitled to?"

ID No. 62/2010

"Whether the action of the management of M/s AKS Engineers and Contractors, a contractor engaged by NTPC Koldam Hydro Electric Power Project, Bilaspur (HP), in terminating the services of their workman Sh. Ramesh Kumar w.e.f. 29/8/2008 is legal and justified? If not, what relief the workman is entitled to?"

ID No. 63/2010

"Whether the action of the management of M/s AKS Engineers and Contractors, a contractor engaged by NTPC Koldam Hydro Electric Power Project, Bilaspur (HP), in terminating the services of their workman Sh. Jeet Ram w.e.f. 29/8/2008 is legal and justified? If not, what relief the workman is entitled to?"

ID No. 72/2010

"Whether the action of the management of M/s AKS Engineers and Contractors, a contractor engaged by NTPC Koldam Hydro Electric Power Project, Bilaspur (HP), in terminating the services of their workman Sh. Chanchu Ram S/o Sh. Gurditu Ram w.e.f. 01/8/2008 is legal and justified? If not, what relief the workman is entitled to?"

Since in all the disputes common questions of law and fact are involved hence they are being decided by this common award.

As per claim statements Respondent No. 1 M/s NTPC Limited Koldam Hydro Electric Power Project (in short NTPC) has been constructing dam at Harmoda. It has engaged Respondent No. 3 M/s Italian Thai Development Private Company Ltd. (in short ITD) for construction work which is turn engaged respondent No. 2 M/s. AKS Engineers and Contractors (in short AKS) as sub-contractor/petty contractor. The claimants-workmen had been appointed through respondent No. 2 on different dates and they worked continuously till their retrenchment which also took place on different dates. As per claim statements the date of joining and date of retrenchment of the different claimants are as follows:-

ID No.	Name	Date of joining	Date of retrenchment	Category
7/2010	Sada Ram	17.8.2004	13.8.2008	Helper/ unskilled workman
10/2010	Mast Ram	01.6.2005	13.8.2008	Helper/ unskilled mazdoor
61/2010	Raj Kumar	07.08.2004	13.8.2008	Driver/ unskilled mazdoor
62/2010	Ramesh Kumar	06.09.2005	03.9.2008	Unskilled workman
63/2010	Jeet Ram	24.7.2004	03.9.2008	Driver heavy vehicle
72/2010	Chanchu Ram	7.8.2004	31.7.2008	Unskilled workman

According to the claimants respondent No. 1 NTPC was their principal employer. They alleged the violation of the provisions of Section 25G and 25H of the Act as at the time of their retrenchment the juniors were retained in the service and after their termination fresh hands were appointed without calling them to join. The project is likely to take many years for completion. Number of workers engaged in the project is more than 700 hence the employer was required to take permission from the appropriate Government also before retrenching the workmen but the employer did not comply the provisions of law in this regard. The employer has sufficient funds and the job is of permanent nature. The claimants are without job. They have prayed for appropriate relief.

Respondent No. 2 AKS did not appear despite sufficient service of notice and the case proceeded ex parte against him. Claim was however contested by respondent No. 1 NTPC and respondent No. 3 ITD. NTPC denied that he is the employer of the claimants. According to it, it had engaged ITD for construction of the said dam who had further engaged respondent No. 2 as sub contractor and the claimants had been appointed by respondent No. 2 AKS. NTPC is not the appointing authority of the claimants and has no concern. It was also stated that the construction work of the project is leading to completion and it is

intermittent in nature. Further Koldam Hydro Electric Power Project is not an 'industrial establishment' as per law and the claims of the claimants be dismissed.

Respondent No. 3 contested the case to say that the work and status of the respondents as alleged in the claim statement is not denied but the workmen had worked with its contractor i.e. Respondent No. 2 intermittently and not continuously. The retrenchment had been made strictly in accordance with the provisions of law on partial completion of work. The construction work at the site is leading to completion. It is intermittent in nature and the project is not an industrial establishment.

Workmen failed to appear for their evidence despite several opportunities given to them. Hence their evidence was closed. Respondent No. 1 and 3 however file their affidavits and also examined the deponents.

None appeared for the workmen at the time of arguments. I heard the representatives of the respondent No. 1 and 3. From the pleadings of the parties and evidence of HR Sharma representative of Respondent No. 3 it appears that the workmen had been employed and terminated by respondent No. 2 AKS Engineers who did not contest the claim the AKS Engineers was a sub-contractor of respondent No. 3 ITD. The claimants have challenged their termination alleging that it is in violation of Section 25G and 25H of the Act. But there is no evidence in support of the alleged violation. Hence, the termination of the service of the claimants-workmen cannot be termed as illegal or unjustified. The reference is therefore answered against the claimants. Let a copy of the award be placed on the record of each of related IDs. i.e. ID No. 7/2010, 10/2010, 61/2010, 62/2010, 63/2010, 72/2010 respectively. Let two hard copies and one soft copy of the award be sent to the Central Government as per the directions of the Central Government.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 17 जुलाई, 2013

का०आ० 1730.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर, टेलीकाम, संगरूर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं०-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 691/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.06.2013 को प्राप्त हुआ था।

[सं० एल-40012/165/2001-आईआर(डीयू)]

सोम नाथ, अनुभाग अधिकारी

New Delhi, the 17th July, 2013

S.O. 1730.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 691/

2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of The General Manager Telecom, Sangrur and their workman which was received by the Central Government on 28-06-2013.

[No. L-40012/165/2001-IR (DU)]

SOM NATH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SRIA.K. RASTOGI, Presiding Officer

Case No. I.D. 691/2005

Registered on 25-08-2005

Sh. Ajaib Singh, S/o Sh. Mahar Singh, Village Bharini Bhatt,
PO Kalake, Tehsil Barnala, Sangrur.

...Petitioner

Versus

The General Manager Telecom, Sangrur-148001, Punjab

....Respondent

APPEARANCES:

For the workman : Sh. Balwinder Singh.

For the Management : Sh. G.C. Babbar Adv.

AWARD

Passed on March 19, 2013

Central Government vide Order No. L-40012/165/2001-IR(DU) dated 31-8-2001, by exercising its powers under Section 10, Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to the Tribunal:-

"Whether the action of the management of Telecom in terminating the service of Sh. Ajaib Singh S/o Sh. Mahar Singh without paying him any retrenchment compensation is legal and just? If not to what relief the concerned workman is entitled to and from which date?"

The case of the workman is that he had been appointed as Special Police Officer (SPO) on daily wage basis under Section 17 of the police Act, 1961 by S.P. Sangrur. His engagement was approved by the Department of Telecom O/o Telecom District Engineer Sangrur for Watchman duty under SDO (T) Barnala and accordingly the workman joined the duty at Barnala on 20-6-1992. He worked there up to his disengagement on 31-1-1997 when he was told that his services were no longer required by the respondent as the watch and ward of the departmental

installation had been entrusted to a private contractor and therefore if he wanted to continue with his duties as a watchman, he should report to the contractor. The workman has alleged that before the termination of his services he had put in four years seven months and eleven days' continuous service with the respondent and his termination is in violation of Section 25F the Act. He has asked for a direction to the respondent to allow him to join duty with immediate effect with continuity of service and back wages.

The claim was contested by the respondent. It was alleged that the claimant had filed CWP No. 10532 of 1997 before the Hon'ble High Court of Punjab and Haryana wherein the State of Punjab, Senior Superintendent of Police Sangrur, Union of India, Telecom District Engineer Sangrur, Assistant Engineer (HRD) O/o Telecom District Engineer Sangrur and SDO Telegraph Barnala had been impleaded. The said CWP was dismissed by the Hon'ble Court by observing that there is no relationship of master and servant or employer-employee between the claimant and the respondents because he was never appointed by the respondents. The workman has concealed this fact and the present claim petition before this Tribunal is not maintainable in view of the order of the Hon'ble High Court. It was also pleaded that department of Telecom (now BSNL) is not an industry and the claimant is not a workman and for this reason also the Tribunal has no jurisdiction. On merits it was contended that the claimant was not recruited/appointed by the respondent nor he is the member of the service, nor any appointment letter under the Recruitment Rules was issued, nor his services were terminated by the respondent as alleged and nor there is any post of Special Police Officer (SPO) in the erstwhile Department of Telecom and BSNL. It was further alleged that in fact the erstwhile respondent had requested the Superintendent of Police Sangrur to provide security for the Telephone Exchange due to disturbed conditions in Punjab and in pursuance of the request of the Department the Superintendent of Police Sangrur had appointed the claimant as Special Police Officer under Section 17 of the Police Act 1961 on daily wage basis and the workman was deputed to the Department of Telecom Services for the purpose of security of Telephone Exchange and after his appointment as SPO by the S.P. Sangrur he had been deployed at Barnala by the department. There is no relationship of master and servant between the respondent and the workman and therefore the question of termination of the service of workman by respondent does not arise. It has also been pleaded that the workman had himself left the department at his own will without any intimation. According to the respondent the workman is not entitled to any relief.

The workman filed a rejoinder and about the judgment of the Hon'ble High Court in Writ Petition No. 10532/1997 he said that the Hon'ble High Court has held that the relationship of master and servant or an employer

and employee never came into existence between the petitioner and the Government of Punjab. According to the workman the Hon'ble High Court has clearly confirmed the relationship of claimant and the respondent in its judgment. It has been further alleged that the workman worked under the supervision and Control of the officers of the management hence, his claim is well maintainable.

In evidence the workman examined himself and filed copy of the order dated 27.11.1991 of Superintendent of Police Sangrur and of order dated 10.12.1991 of the O/o Telecom District Engineer Sangrur. While on behalf of the management Manohar Lal DE (Legal) O/o JMT/D Sangrur examined himself and filed copies of CWP No. 10532 of 1997 and of the judgment of the Hon'ble High Court in the said writ petition.

After the evidence of the parties none-appeared for workman after 21.1.2011 and as none-appeared on behalf of workman to argue the case despite several adjournments, I heard the learned counsel for management and perused the evidence on record.

In the very first place it should be made clear that it is now well-settled that the Telecom Department is an industry. The learned counsel for the management also does not press this plea during the arguments.

Both the parties in their pleadings have heavily relied on the judgment of the High Court in Civil Writ Petition No.10532 of 1997. A copy of the judgment has been provided by the management as paper No. 18. It is a common judgment in CWP No. 3684 of 1997 Pavittar Singh Vs. State of Punjab and Others, CWP No. 3683 of 1997 Jaswant Singh Vs. State of Punjab and Others and CWP No. 10532 of 1997 Ajaib Singh Vs. State of Punjab and Others.

The Hon'ble Court referred Annexure P2 order by which petitioner Pavittar Singh of CWP No. 3684/97 had been engaged as Special Police Officer and held that—

“A careful reading of this order along with letter Annexure P1 dated 1.7.1991 written by Chief General Manager Telecom Punjab Circle Ambala to the officers subordinate to him shows that the petitioners were engaged for saving the Telecom Department and not the Police Department Punjab. In other words the relationship of master and servant or an employer and employee never came into existence between the petitioner and the Government of Punjab.....”

It is clear from this judgment of Hon'ble High Court that the Hon'ble High Court did not hold that there is no relationship of employer and employee between the Telecom Department and the workman. The relationship of employer and employee between the Government of Punjab and the petitioners only was held to be non-existent. Therefore the management can't say that the Hon'ble High Court has

held that there is no relationship of master and servant between the Telecom Department and the workman.

It may also be mentioned here that from the judgment of the Hon'ble High Court it is clear that the workmen in their writ petitions had sought Court's intervention for directing the respondents to appoint them as constables in the regular services of the Police Department of the State of Punjab. Thus the cause of action in the writ petitions was against the Police Department and State of Punjab and not against the Telecom Department. Therefore the relationship of employer and employee between the Telecom Department and the workmen was not in question in the said writ petitions.

A copy of order dated 27-11-1997 of the SP Sangrur has been filed as Annexure C1 of the claim statement. It has not been disputed by the management. From this order it is clear that the workman has been appointed as Special Police Officer under Section 17 of the Police Act on the demand of Telephone Exchange Sangrur for security purposes. It appears from this order that by appointment it is meant that the person concerned has been conferred the powers of a Special Police Officer under Section 17 of the Police Act. Admittedly the wages were paid by the Telecom Department. The letter dated 10.12.1991 of the O/o the Telecom District Sangrur Annexure C2 of the claim Statement shows that the workman worked under the control and supervision of the Telecom Department and has attendance was being marked in the Department. Through this letter the Assistant Engineer HRD communicated the approval of Telecom District Engineer Sangrur of engagement of the workman as SPO for watchman duty under the SDOT Barnala. Copy of the order was forwarded to SDOT Barnala with the direction that he will watch the attendance and draw the allowances etc. of the official. Therefore there remains no doubt that the workman remained into the employment of the respondent. The management witness Manohar Lal in his statement has admitted that the workman worked up to 31-1-1997 and he was paid wages by the department during his posting in the department.

But the question is whether the service of the workman had been terminated by the management. There is no termination order. Workman says that when he went on 31-5-1997 to get the roaster for the next month he was told about his disengagement and about assigning the watch and ward work to contractor. While the case of the management is that the workman left the job of his own will. The workman in his statement during cross-examination has denied that he had left the job of his own will. But the management witness Manohar Lal during his cross-examination struck to the stand taken by the management. There is no evidence that the watch and ward work of the establishment has been assigned to contractor as pleaded by the workman. Management witness was not

given a suggestion even in this regard. I am therefore of the view that the workman has failed to prove that his services were terminated by the management. In the absence of the termination of the services by the management the payment of any retrenchment compensation to the workman was not required.

It is therefore held that the services of the workman were not terminated by the management of Telecom and the workman himself left the job. The reference is accordingly answered against the workman. Let two copies of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 17 जुलाई, 2013

का.आ. 1731.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सब-डिवीज़नल आफ़ीसर, टेलीकाम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 906/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.06.2013 को प्राप्त हुआ था।

[सं एल-40012/28/1999-आईआर(डीयू)]

सोम नाथ, अनुभाग अधिकारी

New Delhi, the 17th July, 2013

S.O. 1731.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 906/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of The Sub-Divisional Officer, Telecom and their workman which was received by the Central Government on 28.06.2013.

[No. L-40012/28/1999-IR(DU)]

SOM NATH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SRI A.K. RASTOGI, Presiding Officer

Case No. I.D. No. 906/2005

Registered on 13.9.2005

Smt. Naina Devi, R/o H.No. 713/6, Bapu Dham Colony,
Sector 26, Chandigarh.

...Petitioner

VERSUS

The Sub-Divisional Officer, Telecom, Telephone-I, O/o The
General Manager, Telecom, Chandigarh.

...Respondents

APPEARANCES:

For the Workman : Sh. P.K. Longia Adv.

For the Management : Sh. Anish Babbar Advocate.

AWARD

Passed on 16th April, 2013

Central Government *vide* Notification No. L-40012/28/99/IR(DU) Dated 22.7.1999, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to the Tribunal:—

"Whether the action of Sub Divisional Officer, Telephone-I, Chandigarh is terminating the services of Smt. Naina Devi W/o Sh. Rajinder Parashad is legal and justified? If not, to what relief the workman is entitled?"

In the claim statement the workman has alleged to be in the employment of the respondent w.e.f. 9.5.1995 as daily wage. The claim is not consistent about the date of termination of the workman. In para 1 she states to be in the employment up to 15.9.1996 while according to para 2 it was up to 16.5.1996 and according to para 3 it was up to 16.6.1996. She has however alleged that she had completed 240 days of service of the date of her termination without any break, yet her services were terminated without any notice, notice pay or compensation. She has claimed her reinstatement with continuity of service and back wages.

The claim was contested by the management. On merit it was contended that the workman had worked as part-time water woman from 9.5.1995 to 15.3.1996 for five to six hours a day. Thereafter she left the respondent of her own will and joined a contractor as contract labour w.e.f. 16.3.1996 and she was paid by the contractor. There is no relationship of master and servant between the management and the workman as she had not been recruited or appointed by the management. The claim of the workman therefore has no merits and deserves to be dismissed.

Workman filed a replica to say that she never worked under a contractor. She was posted in the office and not in the field and her duty was to supply the water to the staff and distribute the telephone bills to the consumers. She was not a part timer and she had worked for full 8 hours and performed her duties in SDO Telephone Office regularly from 9.5.1995 to 15.9.1996.

In evidence the workman examined her while on behalf of management Balbir Chand of the Department was examined. Management relied on certain papers also. It is

important to note that the workman also had summoned certain documents from the management to which the stand of the management was that since the workman was engaged by a contractor hence, there was no occasion for the management to maintain any document regarding workman. The Court in its order dated 1.6.2004 has observed that under the circumstances the workman has option to prove the documents summoned by her through secondary evidence. The workman however could not produce any secondary evidence.

Written arguments were filed on behalf of the parties. I have perused the evidence on record and also the written arguments of the parties.

The reference is about the legality and justification of the termination of the services of the workman. She has claimed her reinstatement with continuity of service and back wages. There is no dispute about regularization or conferment of temporary status. The learned counsel for workman has argued that since the workman was not seeking regularization hence, it is no use to argue that her recruitment was not as per Rules and she had not been issued any appointment letter. There is no evidence that the workman was a contract employee. The management admits the working of the workman for the management as part time water woman from 9.5.1995 to 15.3.1996 and alleged the engagement of the workman thereafter by a contractor. But the management failed to prove the contract and the payment through contractor. The story of workman working under the contractor is concocted one. There is no evidence to substantiate the management's plea that the workman had left the job of her own on 16.3.1996. The learned counsel had annexed certain documents along with written arguments but barring the judgment of the Hon'ble High Court of Punjab and Haryana High Court in CWP No. 22097 of 2010 no documents is worth-consideration at this stage as they have been filed after the close of the case and behind the back of the management. Judgment in CWP No. 22097 of 2010 is not applicable in the present case as the workman before the Hon'ble High Court was a part timer. The employment of the workman as part timer was not in dispute but in the present case the employment itself of the workman with the management is disputed as the management alleges that she was a contract employee.

As it has been noted above, the management also has argued that the claim is vague and unspecific and cannot be relied upon. Regarding the merits the management has argued that the workman worked under the instructions and supervision of a contractor for the period from 16.3.1996 to 15.9.1996 and the wages were also paid by the contractor to her however in the presence of the SDO. The management has filed photocopies of payment of receipts and also of a note signed by the workman saying that she had received all the payments from the contractor and no balance is due on 17.6.1993. It is

important that workman in her cross-examination has admitted that she had received the payment and had executed the documents to acknowledge the receipt of money. She further stated that photocopies of receipt placed on the record by the respondent is correct. After this statement of the workman documents were marked as Exhibit M1 to M8. The management has relied on these documents. According to the management it is clear from the evidence that the workman was not in the employment of the management at the time of her alleged termination hence there is no question of terminating her services by the management.

In the first place it is to be noted that the relationship of employer and employee is to be proved by the party who asserts it. Here the workman is alleging to be in the employment of the management hence it was for her to prove the factum of employment. She has to stand at her own legs and she cannot take the benefit of the weakness of the management's case. Burden of proof was on the workman and the onus was to shift to the management to prove that the workman was an employee of the contractor after she had discharged her burden. I agree with the learned counsel for the workman that the contract agreement Annexure R1 to R3 of the written statement are of no use as they do not relate to the period in question. But Exhibit M1 which was been admitted by the workman during her cross-examination clearly shows that some contractor was her pay master. According to this document she was in the employment of the contractor.

Payment sheets concerning to period from March 1996 to September 1996 (Exhibit M2 to M8) have been filed by the management. It has been argued by the management that the payment had been made to the workman by the contractor through Exhibit M1 to M8 in the presence of the SDO of the Department.

It is important to note that the workman alleges her termination in 1996. There is no evidence that in 1996 at the time of the termination of her services she was in the employment of the management. Under the circumstances the termination of her services in 1996 by the management cannot be accepted. The reference is therefore answered against the workman. Let two copies of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 17 जुलाई, 2013

का०आ० 1732.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर, कोल डेम हाइड्रो इलेक्ट्रिक पावर प्रोजेक्ट एण्ड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 191 और 193/2011) को

प्रकाशित करती है, जो केन्द्रीय सरकार को 28.06.2013 को प्राप्त हुआ था।

[सं एल-42012/269 और 275/2010-आईआर (डीयू)]

सोम नाथ, अनुभाग अधिकारी

New Delhi, the 17th July, 2013

S.O. 1732.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 191 and 193/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of The General Manager, Koldam Hydro Electric Power Project & Others and their workman which was received by the Central Government on 28.06.2013.

[No. L-42012/269 and 275/2010-IR(DU)]

SOM NATH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH.

PRESENT: SRI A.K. RASTOGI, Presiding Officer.

1. Case No. ID No. 191/2011
Registered on 8.6.2011
Sh. Daguram S/o Sh. Het Ram, Village Chakuli,
PO Seri Kothi, Tehsil Sunder Nagar, Mandi.
2. ID No. 193/2011
Registered on 8.6.2011
Sh. Hem Raj S/o Sh. Amaru Ram, Village, Khanagla,
PO Lagdhar, Tehsil Kotli, Mandi.

....Applicants

VERSUS

1. The General Manager, Koldam Hydro Electric Power Project, NTPC, VPO Baramana, Bilaspur.
2. Proj. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydro Electric Power Project, Village Kayam, PO Slapper, Tehsil Sundernagar, Mandi.
3. M/s U.R. Infrastructure Company Private Ltd., Village Chamb, Post Office Harnora, Bilaspur.

....Respondents

APPEARANCES:

For the workman — Sh. M.S. Gorski for the workman

For the Management — Sh. V.P. Singh for respondent No. 1 Sh. Shamsher Singh for respondent No. 2.

AWARD

Passed on 7.5.2013

Vide Order No. L-42012/269/2010-IR(DU)] and L-42012/275/2010-IR(DU)], both dated 6.5.2011 the Central Government in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred industrial disputes between the aforesaid parties for adjudication to this Tribunal.

ID No. 191/2011

"Whether the retrenchment of services of Sh. Daguram S/o Sh. Het Ram w.e.f. 14/8/2008 by M/s. U.R. Infrastructure Company Private Limited, Chamb, Bilaspur, a sub contractor of M/s. Italian Thai Development Public Limited, a contractor of M/s. NTPC Limited without following the principal of 'Last come first go' is legal and justified? What relief the workman is entitled to?"

ID No. 193/2011

"Whether the retrenchment of services of Sh. Hem Raj S/o Sh. Amaru Ram w.e.f. 14/8/2008 by M/s. U.R. Infrastructure Company Private Limited, Chamb, Bilaspur, a sub contractor of M/s. Italian Thai Development Public Limited, a contractor of M/s. NTPC Limited without following the principal of 'Last come first go' is legal and justified? What relief the workman is entitled to?"

Since in both the IDs common questions of law and fact are involved, hence they are being decided by this common award.

As per claim statements General Manager NTPC Koldam Hydro Electric Power Project (in short NTPC) is the principal employer who is constructing the dam and respondent No. 2 M/s. Project Manager Italian Thai Development Company Limited (in short ITD) is its main contractor while respondent No. 3 M/s. UR Infrastructure Company (in short URI) is a Sub-contractor/Petty contractor of respondent No. 2. The workmen had been appointed through URI and they had joined services on 6.1.2005 (Daguram) and 6.12.2004 (Hem Raj) as Assistant Labour Attendants in the skilled labour workman category. Their services were however terminated on 14.8.2008 in violation of Section 25G of the Act. While terminating their services juniors were retained in service. In the claim statements violation of Section 25F of the Act has also been alleged and it has been said that new hands had been recruited after the retrenchment of the workman without calling them (i.e. workman). They have prayed for an appropriate relief.

Respondent No. 3 did not contest the claim. He failed to appear and file written statement despite notice. Case proceeded against him. Respondent No. 1 and 2 however put in their appearances and filed written statements. In the respective written statements of the aforesaid

respondents the work and status of the respondents as alleged in the claim statement has not been disputed. The case of the NTPC is that workmen are not the employees of the NTPC. They were the appointees of Respondent URI and NTPC has no concern with them. Both the respondents have pleaded that project is leading to completion and the construction work is intermittent in nature. Respondent ITD has further cleared that the workmen had worked with their contractor i.e. Respondent URI intermittently and not continuously and the retrenchment was made strictly in accordance with the provision of law. The decision to retrench the workmen was taken under the compelling circumstance on partial completion of work.

At the evidence stage the workmen failed to appear and file their affidavits despite several opportunities given to them. Hence their evidence was closed on 7.5.2013.

I heard the ARs of the respondent No. 1 and 2. It may be noted that Section 25H of the Act provides right of re-employment of a retrenched workman but that right is not a subject matter of the reference. The reference is about the violation or otherwise of the Section 25G of the Act. The workmen have alleged the violation of said provision by stating that while retrenching their services juniors were retained in service but the claimants have failed to produce any evidence in support of their allegations. Hence it is not proved that the workmen were retrenched without following the principle of last come first go. The retrenchment is therefore legal and justified. Workmen are not entitled to any relief. Reference is answered against them. Copy of the award be placed on each of the IDs i.e. ID No. 191/2011 and ID No. 193/2011. Let two hard copies and one soft copy of the award be sent to the Central Government as per the directions of the Central Government.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 17 जुलाई, 2013

का०आ० 1733.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मैनेजर, टेलीकॉम, भटिंडा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 806 और 810/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.06.2013 को प्राप्त हुआ था।

[सं० एल-40012/173 और 172/1999-आईआर (डीयू)]
सोम नाथ, अनुभाग अधिकारी

New Delhi, the 17th July, 2013

S.O. 1733.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 806 and 810/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the

Annexure, in the Industrial dispute between the employers in relation to the management of The General Manager, Telecom, Bhatinda and their workman which was received by the Central Government on 28.06.2013.

[No. L-40012/173 and 172/1999-IR (DU)]
SOM NATH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SRIA.K. RASTOGI, Presiding Officer

Case No. I.D. 806/2005

Registered on 6.9.2005

Shri Anil Kumar C/o The President Telecom Labour Union, Mohalla Hari Nagar, Lal Singh Basti Road, Bathinda.

Case No. I.D. 810/2005

Registered on 7.9.2005

Shri Pritam Singh C/o The President Telecom Labour Union, Mohalla Hari Nagar, Lal Singh Basti Road, Bathinda.

....Claimants

VERSUS

The General Manager, Telecom, Bathinda (Punjab).

....Respondent

APPEARANCES

For the workman : Sh. Sudeep Singh, AR.

For the Management : Sh. G.C. Babbar, Advocate

AWARD

Passed on March 18, 2013

The Central Government *vide* Order No. L-40012/173/99-IR (DU) and No. L-40012/172/99-IR (DU) both dated 29.9.1999 in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following disputes for adjudication to the Tribunal:—

ID No. 806/2005

"Whether the action of the management of General Manager, Telecom, Bathinda in terminating the services of Sh. Anil Kumar just and legal. If not, what relief the workman is entitled to and from which date?"

ID No. 810/2005

"Whether the action of the management of General Manager, Telecom, Bathinda in terminating the services of Sh. Pritam Singh just and legal. If not, what relief the workman is entitled to and from which date?"

In both the references common question of law and fact are involved hence, they are being decided by this common award.

As per claim statements workman Anil Kumar of ID No. 806/2005 on 1.8.1996 and Pritam Singh of ID. No. 810/2005 on 31.1.1997 had been appointed by the management on the permanent post of Clerk. Their services were however terminated on 31.12.1997 without any charge-sheet, inquiry or compensation. While terminating their services juniors were retained and new hands were also recruited after their termination. According to them termination of their services is illegal. They have claimed their reinstatement with continuity of service and back wages.

Claims were contested by the management. According to the management the workmen had not been engaged by the management nor the management paid any wages to them. The management had entered into an agreement with contractors for supply of contract labour. The workmen might be working under the management through the said contractor on daily wage basis. The question of terminating the services of the workmen by the management does not arise. No seniority list about the contract labour is maintained by the management. The claim of the workmen therefore has no substance and is liable to be dismissed.

During the hearing of the petition the workmen absented and their representative withdrew from the cases saying that he has no instructions from the workmen. the workmen failed to appear despite notices sent by registered post to them. *Vide* order dated 30.8.2010 in ID No. 806/2005 and *vide* order dated 2.9.2010 in ID No. 810/2005 the cases were ordered to proceed ex-parte against workmen.

In ID No. 810/2005 workmen had examined himself and one witness Mukund Lal in evidence before order dated 2.9.2010 of ex-parte hearing. He had filed photocopies of certain documents also. In ID No. 806/2005 however no witness including workman could be examined. On behalf of management however Major Singh SDE (Legal) in ID No. 806/2005 and Ashok Kumar SDE (Legal) in 810/2005 were examined. Management filed the agreement and related papers in both the cases.

As none appeared for the workmen hence, I heard the learned counsel for the management and perused the evidence on record.

The only important point involved in these cases is whether there is a relationship of employer and employee between the management and the workmen. Need not to say that since the workmen are alleging to be the employees of the management the burden was on them to prove the relationship.

In ID No. 806/2005 there is only the affidavit of workman himself in support of his case. This affidavit

besides being self-serving is not worthy of credence because the workman did not produce himself for cross-examination by the management. There is no evidence of his appointment by the management.

In ID No. 810/2005 there is however evidence of workman and of one witness Mukund Lal in favour of workman. Workman produced photocopies of daily diary of a letter and of Attendance Register. But without originals, the photocopies cannot be relied upon. The workman in the case had summoned the original documents from the management but the stand of the management was that since the workman was not an appointee of the management hence there is no record with the management and secondly since the photocopies of the documents have been filed by the workman hence, originals also must be in his possession.

The workman Pritam Singh in his cross-examination admitted that he had not been given any appointment letter. He told that his application for recruitment had been entertained by Telecom District Manager but he has no copy of that application.

Mukund Lal witness of the workman in ID No. 810/2005 was Senior TOA in the Office of Telecom GMT, Bathinda at the time of filing his affidavit. According to him the workman Pritam Singh had worked in his office from 31.1.1997 to 31.12.1997 and the work was being allotted to him by Head Clerk/JO TRA of GMT Bathinda and the workman Pritam Singh worked under the complete control and supervision of the officers of management, his attendance was being marked by these officers and wages were also being paid by the office. By the time of his cross-examination the witness had been engaged on muster-roll. It is a new case, that was pleaded neither by the workman nor by the management. I do not find the evidence of Mukund Lal worth-reliance.

In short in ID No. 810/2005 also there is no evidence to say that the workman Pritam Singh had been appointed and terminated by the management, was being paid wages by the management, was working under the control and supervision of the management and had integrated with the management. It is important to cite here the law laid down by the Hon'ble Supreme Court in *Workmen of Nilgiri Cooperative Marketing Society Limited Versus State of Tamil Nadu 2004-II-LLI 253* the Hon'ble Court held "No single test be it control test organization test or any other test was determinative test for determining the jural relationship of employer and employee". The Hon'ble Court held that the court is required to consider several factors which would have a bearing on the result: (a) who is appointing authority? (b) Who is pay master? (c) Who can dismiss? (d) How long alternative service lasts? (e) The extent of control and supervision, (f) The nature of job e.g. whether it is professional or skilled work? (g) Nature of establishment? (h) The right to reject.

Considering the case of Pritam Singh of ID No. 810/2005 in the light of the law laid down by the Hon'ble Court it is clear that he has failed to prove that he was the employee of the management.

In ID No. 806/2005 there is no evidence at all on behalf of the workman.

Hence, in both the cases the workman concerned cannot be taken to be an employee of the management. There is no question of termination of their services by the management. Consequently in both the cases *i.e.* in ID No. 806/2005 and 810/2005 the reference is decided against the workman. Let two copies of the award be sent to the Central Government for further necessary action and one copy each of the award be placed on the record of ID No. 806/2005 and ID No. 810/2005.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 17 जुलाई, 2013

का०आ० 1734.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार असिस्टेंट सुपरिन्टेंडेंट आफ पोस्ट आफिस, लुधियाना के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं० 2, चंडीगढ़ के पंचाट (संदर्भ संख्या 387/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.06.2013 को प्राप्त हुआ था।

[सं. एल-40012/40/2005-आईआर (डीयू)]

सोम नाथ, अनुभाग अधिकारी

New Delhi, the 17th July, 2013

S.O. 1734.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 387/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of The Assistant Superintendent of Post Office, Ludhiana and their workman which was received by the Central Government on 28.06.2013.

[No. L-40012/40/2005-IR(DU)]

SOM NATH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SRIA.K. RASTOGI, Presiding Officer.

Case No. I.D. No. 387/2005

Registered on 19.8.2005

Sh. Charanjit Singh, S/o Sh. Inderjit Singh, C/o Kashmiri Lal Karyana Store, House No. 136, Ludhiana.

...Petitioner

VERSUS

The Assistant Superintendent of Post Office, North City, Sub-Division, Ludhiana (Punjab) Ludhiana.

...Respondents

APPEARANCES

For the workman : Sh. B.N. Sehgal.

For the Management : Sh. K.K. Thakur.

AWARD

Passed on 4th March, 2013

Central Government vide Notification No. L-40012/40/2005-IR(DU)) dated 5.8.2005, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial Dispute for adjudication to this Tribunal:—

"Whether the action of the management of Assistant Superintendent of Post Office, Ludhiana in removing Sh. Charanjit Singh S/o Sh. Inderjit Singh, Ex-ED Packer w.e.f. 5.7.2004 from the service without giving him proper opportunity to defend his case and by violating the provisions of ID Act is legal and justified? If not to what relief the concerned workman is entitled to and from which date?"

The workman was posted as Extra-Departmental Packer (in short 'ED Packer') at Bus Stand Post Office Ludhiana at the relevant time. In claim statement there is a reference of two earlier terminations and reinstatements of the workman but for the purpose of the present reference the relevant facts are that after the second termination of the workman he had served a demand notice dated 22.8.2003 on the management and during the conciliation proceedings he had been reinstated in service and he had joined duties at Bus Stand Post Office, Ludhiana on 5.9.2003. Thereafter he was transferred to GDS BPM Khasi Kalan, Branch Office Ludhiana where he was served a charge-sheet dated 10/17.11.2003. He denied the charge in his reply dated 12.1.2004 and 21.6.2004 as he had never absented from duty intentionally but had to remain on leave due the circumstances beyond his control. In claim statement it has been alleged that the inquiry was illegal, against the rules and principles of natural justice, in the presence of the workman no witness was examined, he was not granted the opportunity to cross-examine the witness and he was punished on the basis of no evidence. Further he was not given any show cause notice before the punishment order and was not granted any personal hearing and he was removed from service illegally and arbitrarily on 8.6.2004/5.7.2004. He has prayed for his reinstatement with continuous service and back wages.

The claim was contested by the respondents. Jurisdiction of the Tribunal was challenged on the ground that the post of EDP is a civil post and any grievance regarding this post has to be agitated before the CAT. It was also alleged that the claimant is not a workman. On merits it was alleged that the claimant had remained absent from duty unauthorizedly from 1.9.2000 to 5.9.2003. He however resumed his duties on 5.9.2003 after a period of three years and three days and he was then proceeded under Rule 10 of GDS Conduct and Employment Rules 2001 for remaining unauthorizedly absent from duty. The charge-sheet was issued to him vide memo of even number dated 10.11.2003. Before the Inquiry Officer the claimant admitted to have received the charge-sheet and he had pleaded guilty to the charges levelled against him. In his hand-written application submitted by him to the Inquiry Officer on 8.1.2004 he had admitted the charges as correct. The disciplinary authority after carefully going through the report of the Inquiry Officer, defence statement of the claimant and relevant records of the case came to the conclusion that the claimant was guilty of the charge of remaining absent from duty unauthorizedly for more than three years and therefore he was removed from service. According to management appropriate action has been taken against the claimant according to the department Rules and Regulations and after following the correct procedure of giving him fair opportunity to defend himself.

In his replication the workman said that the Tribunal has the jurisdiction and he is a workman. Regarding his admission in the inquiry he said that it had not been made voluntarily but under misrepresentation as he had been directed to write down as wished by the Inquiry Officer promising his reinstatement.

In evidence the workman examined himself and on behalf of the respondent Amarjit Singh Sekhon, Assistant Superintendent, Post Office was examined. Management filed a copy of the inquiry record.

I have heard the learned counsel for the parties and have perused the evidence on record. Though in the claim statement the inquiry has been assailed on the ground that the prosecution witnesses were not examined in the presence of the workman and he was not given any opportunity to cross-examine them but it was not pressed by the workman that the inquiry was not fair. From the inquiry record made available by the management it is clear that in fact no witness had been examined in the inquiry. Therefore there was no occasion for examining any witness in the presence or at the back of the workman or providing him an opportunity to cross-examine. The punishment was inflicted on the basis of the admission of the workman himself. It is contained in his letter dated 28.1.2004 which is MW1/1. In this letter it has been stated that the workman has received the charge-sheet, he has not to appoint any defence assistant and he admits the correctness of the

charge contained in the charge-sheet. In unequivocal terms he stated that he could not attend the duties from 1.9.2000 to 5.9.2003 and could not apply for leave as he was ill and the family circumstances were also bad. Regarding this admission the workman said nothing in his claim statement. However when the management in its written statement stated about this admission then in his replication workman said that this admission in the inquiry had not been made voluntarily but under misrepresentation as he had been directed to write down as desired by the Inquiry Officer and had been promised reinstatement.

Obviously, this statement in the replication is an afterthought and cannot be considered as genuine. Moreover it is conspicuously absent in the affidavit of the workman. During cross-examination he has stated that he had written according to the wishes of management officer as he had been misrepresented that he will be reinstated. But there is nothing in his statement to show that this statement is regarding his admission contained in letter MW1/1. I do not accept the contention of the workman that his admission was result of some misrepresentation or inducement by the management. The disciplinary authority committed no wrong in acting upon the admission of the workman. I need not to say that the admission is the best evidence against it maker.

From the statement of the management-witness it appears that the workman had not joined on 5.9.2003 on account of any settlement in proceedings arising out of demand notice dated 22.8.2003. The witness denied any such agreement between the parties before conciliation officer and also denied that the workman consequently had applied for reinstatement. From the statement of the management-witness it is clear that the workman had joined on 5.9.2003 after his absence from duty from 1.9.2000.

It is however clear that the disciplinary authority had not issued any show cause notice and opportunity of personal hearing before awarding punishment had not been given to the workman. The contention of the workman in this regard finds support from the evidence on record. I agree with the learned counsel for the workman that there was a fault in decision-making procedure. The learned counsel for the workman vehemently argued about the harshness of punishment. The learned counsel for the management on the other hand argued that the workman was unauthorizedly absent from duty for three years and the punishment awarded to him is appropriate.

In the first place it will be proper to make clear that this Court has jurisdiction to interfere with the quantum of punishment. The learned counsel for workman cited in this regard LIC of India Vs. R. Suresh 2008(2) SCT 664 wherein the Apex Court held—

1. The jurisdiction of the Industrial Court being wide and it having been conferred with the

power to interfere with the quantum of punishment.

2. It could go into the nature of charges, so as to arrive at a conclusion whether the respondent had misused his position or his acts are in breach of trust conferred upon him by his employer.
3. In exercising such jurisdiction the nature of misconduct alleged, the conduct of the charges, the manner in which the inquiry proceedings had been conducted may be held to be a relevant factor.
4. Each case must be decided on its own facts.
5. Indisputably discretion must be exercised judicially; it cannot be based on whims or caprice.

In the present case since the workman was not given any notice of the proposed punishment and any opportunity of personal

I am of the view that the punishment of the stoppage of two increments permanently along with withholding back wages will be sufficient and proper for the misconduct of the workman.

It is therefore held that the action of the management in removing the workman from the service without giving him notice of proposed punishment and without giving him opportunity of personal hearing is not legal and justified. Punishment of removing of service is reduced to stoppage of two increments permanently and the workman is entitled to be reinstated without any back wages. Management is directed to reinstate the workman within one month from getting the copy of award. Let two copies of the award be sent to the Central Government and one copy to District Judge Ludhiana for information and further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 17 जुलाई, 2013

का०आ० 1735.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिबीजनल सिग एण्ड टेलीकाम इन्जीनियर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं०-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 418/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.06.2013 को प्राप्त हुआ था।

[सं एल-40012/167/2002-आईआर (डीयू)]

सोम नाथ, अनुभाग अधिकारी

New Delhi, the 17th July, 2013

S.O. 1735.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 418/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of the Divisional Sig & Telecom Engineer, and their workman which was received by the Central Government on 28.06.2013.

[No. L-40012/167/2002-IR(DU)]
SOM NATH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SRIA.K. RASTOGI, Presiding Officer

Case No. I.D. No. 418/2005

Registered on 19.8.2005

Sh. Roop Das S/o Sh. Bhag Chand, Village Grole, PO Parwanoo, Tehsil Kasauli, Solan (HP)

...Petitioner

VERSUS

The Divisional Sig. & Telecom Engineer, Northern Railways Ambala Cantt, Haryana

...Respondent

APPEARANCES

For the Workman : Sh. Vijay Mangla

For the Management : Sh. N.K. Zakhmi.

AWARD

Passed on 19.2.2013

Central Government vide Notification No. L-40012/167/2002-IR(DU) dated 25.10.2002, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to the Tribunal:—

"Whether the action of the management of Divisional Sig. and Telecom Engg. (DSTE), Northern Railway, Ambala Cantt in terminating the service of Sh. Roop Das S/o Sh. Bhag Chand, Ex-Helper, Khalsi/Tele, is just and legal? If not so what relief the workman is entitled to?"

As per the claim statement the workman had been charge-sheeted for remaining absent from duty from 22nd May, 1993 till the date of charge-sheet i.e. 2nd November, 1993. In an inquiry the Inquiry Officer found the charge not

proved but the competent authority passed on order of his termination from service. An appeal preferred by the workman also failed. This termination was however set aside on OA No. 652/HP of 1995 by Hon'ble Central Administrative Tribunal, Chandigarh with the liberty to the department to proceed afresh against the workman after serving him the charge sheet, note of disagreement and copies of documents relied upon and to proceed with the inquiry after giving an opportunity to the workman. The department after acting upon the judgment of the Hon'ble Tribunal again terminated the services of the workman *vide* order dated February 24, 1999 and again the appeal of the workman was rejected. Workman submitted a demand notice challenging the order of termination. In reply thereto the management however stated that in consideration of appeal of the workman dated 28.2.2001 and CO's letter dated June 4, 2001 the punishment of removal of service as already passed against the workman was reduced to that of compulsory retirement from service. According to the workman even this order as passed is illegal and he is not entitled to reinstatement with continuity of service and back wages.

The claim was contested by the department and it was alleged that the present reference is without jurisdiction and is not maintainable and it does not reflect the real dispute. The reference is about the action of the management in terminating the services of the workman whereas the case of the management is that the Revisional Authority after considering the family circumstances of the petitioner and also taking a lenient view in the matter reduced the punishment awarded by the disciplinary authority and upheld by the appellate authority to the extent of compulsory retirement from service.

From the pleadings of the parties it is clear that the termination of the workman is not in dispute now as the said punishment has been converted to compulsory retirement. It is important to note that way back in 2007 on 18.7.2007 the learned counsel for the workman also had stated in the Court that the reference is not proper and he will make a representation to get it modified but no further steps in this regard seems to have been taken despite the case remained pending for quite long time. The workman died during the pendency of the case. His LRs were substituted *vide* order dated 21.7.2010.

As stated above it is clear from the pleadings of the parties that the termination of the workman (since deceased) is no more in dispute hence a 'No Dispute' award is passed in the case. Let two copies of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 17 जुलाई, 2013

कांआ 1736.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैनेजिंग डायरेक्टर,

मैसर्स एंकेएस इजीनियरिंग एण्ड अदर्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 128/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.06.2013 को प्राप्त हुआ था।

[सं एल-42012/40/2010-आईआर (डीयू)]

सोम नाथ, अनुभाग अधिकारी

New Delhi, the 17th July, 2013

S.O. 1736.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 128/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Chandigarh as shows in the Annexure, in the Industrial dispute between the employers in relation to the management of the Managing Dir., M/s AKS Engineers & others and their workman which was received by the Central Government on 28.06.2013.

[No.L-42012/40/2010-IR(DU)]

SOM NATH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SRIA.K. RASTOGI, Presiding Officer

Case No. 128/2011

Registered on 28.4.2011

Sh. Bhoop Singh S/o Sh. Prema, Village Diargi, PO Diargi, Tehsil Sadar, Mandi (H.P.)

....Applicants

VERSUS

1. The Managing Dir., M/s AKS Engineers and Contractors Kol Dam Hydra Electric Power Project, Sanjay Sadan, Chhota Shimla
2. Prof. Manager, Italian Thai Development Co. Ltd., Kol Dam Hydra Electric Power Project, Village Kayam, PO Slapper, Tehsil, Sundernagar, Mandi

...Respondents

APPEARANCES:

For the Workman — Sh. M.S. Gorski for the workman

For the Management — None for respondent No. 1

Sh. H.R. Sharma for respondent No. 2

AWARD

Passed on 7.5.2013

Vide Order No. L-42012/40/2010-IR(DU), dated 28.3.2011 the Central Government in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the aforesaid industrial disputes for adjudication to this Tribunal.

"Whether the action of the management of M/s AKS Engineers and Contractors a contractor of NTPC Koldam Hydroelectric Power Project, Bilaspur in terminating the services of their workman Sh. Bhoop Singh S/o Sh. Prema w.e.f. 14.1.2008 for his alleged act of habitual absenteeism is legal and justified? What relief the workman is entitled to?"

Story in the claim statement is different from the reference. The reference is about the termination of the service of the workman on a charge of habitual absenteeism while the claim statement is about retrenchment in violation of Section 25G of the Act. It has been alleged that the juniors were retained at the time of retrenchment of the workman. Violation of Section 25H has also been alleged. Dispute under reference has no mention in the claim statement. Respondent No. 1 Managing Director M/s AKS Engineers (in short AKS) failed to appear despite sufficient notice hence case proceeded against him. Respondent No. 2 Italian Thai Development Company (in short ITD) contested the claim to say that the claimant has made out a case for violation of provisions of retrenchment, whereas it is revealed from the record of the employer i.e. sub-Contractor respondent No. 1 AKS that the workman had been removed from the service after charge-sheeting and holding a full-fledged inquiry on a charge of misconduct. Hence the claimant has no case.

Despite several opportunities given to workman he did not appear for evidence. From the claim statement itself no dispute under reference is made out hence a 'No Dispute' award is passed in the case. Reference is answered against the workman. Let two hard copies of the award and one soft copy be sent to the Central Government as per the directions of the Central Government.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 17 जुलाई, 2013

कांआ 1737.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० II, चंडीगढ़ के पंचाट (संदर्भ संख्या 759/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17/07/2013 को प्राप्त हुआ था।

[सं एल-12012/65/2003-आईआर (बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 17th July, 2013

S.O. 1737.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. ID No. 759/2005) of the Central Government Industrial-cum-Labour Court No. II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 17/07/2013.

[No. L-12012/65/2003-IR (B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

PRESENT: SHRI A.K. RASTOGI, Presiding Officer.

Case No. I.D. 759/2005

Registered on 2.9.2005

Shri Satinder Pal Singh, H.No. 1368, Phase I, Ram Darbar, Chandigarh

...Petitioner

VERSUS

Regional Manager, Bank of Baroda, Regional Office Punjab, Bank Square, Sector 17B, Chandigarh

...Respondent

APPEARANCES:

For the Workman Sh. R.P. Rana, Advocate.

For the Management Shri B.B. Bagga, Advocate.

AWARD

Passed on 21.6.2013

Central Government *vide* Notification No. L-12012/65/2003-IR(B-II) Dated 18.7.2003, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to the Tribunal:—

"Whether the action of the Assistant General Manager, Bank of Baroda, Chandigarh in removing Sh. Sat Pal Chauhan, Ex-Peon from service w.e.f. 29.5.2001 is just and legal? If not, what relief the workman is entitled to and from which date?"

As per claim statement the workman was in the service of management as a Peon for more than 25 years. He could not attend the office w.e.f. 20.6.1998 due to continuous treatment of mental disturbance in the family. On 2.2.2001 has management charge-sheeted the workman for his absence. The charge-sheet was however not supplied to him till the inquiry proceedings. He was informed by the Presenting Officer about the date fixed. The Presenting Officer and Inquiry Officer misrepresented to

him that the inquiry proceedings are mere formality and nothing is going to happen against him and he need not to engage any defence representative. The workman has further stated that his signatures on the proceedings dated 1.3.2001 and 12.3.2001 were obtained on the basis of the aforesaid misrepresentation and he was forced to admit the contents of the charge-sheet and to make a request in writing in respect of taking a lenient view. He was not supplied the inquiry report and the disciplinary authority without giving him personal hearing passed the order of removal from service in violation of principles of natural justice. In the claim statement the workman has challenged the fairness of the inquiry on the ground of denial of proper opportunity of hearing and of not allowing him to engage defence representative, and on the ground that no documents including charge-sheet and alleged letters were tendered during the inquiry nor the list of documents or of witnesses was supplied to him. The workman has also stated that he had been trying to join the duty from 1.7.1999 but he was not allowed to join. According to him the order of removal from service is against the provisions of the Act and he be reinstated with full back wages and continuous service.

The claim was contested by the management and it was stated that the workman during his service tenure remained unauthorizedly absent for a total period of 1993 days as detailed in written statement. From 20.6.1998 he remained continuously absent without any proper leave application till the date of his termination from service on 29.5.2001. He preferred to remain absent even on loss of pay and despite various communications sent to him under registered/ordinary/post and telegram advising him to report for duty. Charge-sheet dated 2.2.2001 was issued to him and he attended the inquiry on the first date of hearing *i.e.* 1.3.2001 when he admitted to have received the charge-sheet. On 1.3.2001 further inquiry proceedings were adjourned on the request of workman to enable him to engage defence representative. On the adjourned date 12.3.2001 he stated to the Inquiry Officer that he did not want the services of defence representative. It was denied that the Inquiry Officer or the Presenting Officer forced the workman to admit the charge and assured him of taking lenient view if he admits the charges. The admission of charge was voluntary and unconditional. Not only the workman had admitted the charges but he had given a letter dated 12.3.2001 also containing the admission of charge. It was also denied that the report of the Inquiry Officer was not supplied to the workman. According to the management the report had been sent on 13.3.2001 and the workman had acknowledged its receipt on 16.3.2001. The workman failed to make any representation against the report. The disciplinary authority had issued the show cause notice about the proposed punishment fixing the date for personal hearing and he had appeared also for personal hearing on 30.5.2001 before the disciplinary

authority and consequently final order dated 30.5.2001 imposing the punishment of removal from service was passed by the disciplinary authority. According to the management the inquiry proceedings were conducted properly. Opportunity of hearing was provided to the workman, inquiry proceedings were adjourned on the request of workman to facilitate to bring the DR and since the workman himself voluntarily and unconditionally had admitted the charge of prolonged absence and did not contest the case hence there was no necessity of any evidence. The punishment order is perfectly justified in view of the gravity of the misconduct.

From the claim statement it is clear that the workman has challenged the fairness of the inquiry and the case had been fixed for hearing on the fairness of inquiry but when the inquiry record was produced by the management on the order of the Court the learned counsel for workman did not press the point of fairness of inquiry on 13.10.2011 and submitted that the punishment awarded to the workman is disproportionate to the alleged misconduct. The parties' counsel then stated that no evidence is to be adduced and case be fixed for arguments on merits. The case was therefore fixed for arguments. Learned counsel for workman made oral submissions. The management however submitted written arguments. I consider the oral submissions of the learned counsel for workman and perused the written arguments of the management and also the record produced by the management.

A perusal of the record file filed by the management shows that it is not the complete record of inquiry. It appears the personal file of the workman having certain papers concerning the inquiry has been filed, charge-sheet is not available on the record but the inquiry proceedings paper Nos. 33 to 37 had been filed which shows that the workman had attended the inquiry proceedings on 1st March, 2001 and on 12.3.2001. On 1.3.2001 he had admitted to have received and read the charge-sheet and to have understood its contents. On being asked by Inquiry Officer whether he pleads guilty or not to the charge the workman had replied that he had asked his union to defend his case and it named on Amrit Lal the General Secretary of Union as his defence representative and as the above named defence representative was not able to attend the proceedings that day he had requested for adjournment. Consequently the proceedings were adjourned to 12.3.2001. On 12.3.2001 no defence representative appeared and the workman had stated to plead his case himself. On being asked by the Inquiry Officer he voluntarily and unconditionally admitted all the allegations and charges held against him. He gave a letter dated 12.3.2001 also. A copy of the letter dtd. 12.3.2001 is paper No. 32 in which the workman has stated that he admits the allegations of the charge-sheet unconditionally and without any pressure. It is important to note that the workman in his claim statement has admitted to have attended the proceedings on 1.3.2001 and 12.3.2001 and to

have signed the proceedings and written the letter admitting the charges but his case is that his signature on the proceedings and his admission of the charges was obtained by the Inquiry Officer and Presenting Officer on the assurance that a lenient view will be taken in this case but there is no evidence even the affidavit of workman himself in support of the allegations. Therefore there is no reason to disbelieve the facts mentioned in the inquiry report. As stated above the fairness of the inquiry had not been pressed by the counsel for the workman also. Hence the question of fairness of inquiry need not be probed further. Inquiry was fair and proper.

The learned counsel for workman however vehemently argued that the workman has 25 years' service to his credit and there is no allegation of embezzlement etc., merely on the charge of unauthorized absence, the punishment of removal from service is disproportionate and harsh and therefore lenient view be taken regarding the punishment.

Learned counsel for management has argued that considering the gravity of the charge of serious misconduct by remaining absent for abnormally long period of about 3 years despite many letters written to him to report for duty, the workman does not deserve any leniency.

I have considered the submissions of the parties. The absence of workman from duty is not natural or normal. He remained absent from duty from 20.6.1998 to the date of punishment order dated 23.5.2001 (paper No. 42). Thus he remained absent from duty for about 3 years continuously. In a Country having great unemployment, no organization or institution can afford to bear the burden of an employee who has no devotion and sincerity for his duties. I do not find any justification for interfering in the action of the management. I am therefore of the view that the action of the management in removing the workman from service w.e.f. 30.5.2001 is just and legal. The workman is not entitled to any relief. Let hard copy and the soft copy of the award be sent to the Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer
नई दिल्ली, 18 जुलाई, 2013

का०आ० 1738.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ़ बड़ौदा के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पणजी (गोवा) के पंचाट (संदर्भ संख्या आई टी/23/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18/07/2013 को प्राप्त हुआ था।

[सं० एल-1203/259/97-आईआर (बी-II)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 18th July, 2013

S.O. 1738.—In pursuance of Section 17 of Industrial Disputes Act, 1947, the Central Government hereby publishes the Award (Ref. No. IT/23/99) of the Central Government Industrial Tribunal/Labour Court, Panaji now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of

Baroda and their workman, which was received by the Central Government on 18.07.2013.

[No. L-12012/259/97-IR(B-II)]
SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT GOVERNMENT OF GOA AT PANAJI (BEFORE SMT. BIMBA K. THALY, PRESIDING OFFICER)

Ref. No. IT/23/99

Shri J.T. Shetye rep. by
The Vice President,
Bank of Baroda,
Employees' Congress D-14,
Housing Board Colony,
Near St. Xavier College,
Mapusa, Bardez, Goa. ... Workman/Party I

V/s

The Regional Manager,
Bank of Baroda,
Regional Office Goa Region,
4th Floor, Plaza Chambers,
Dr. A.B. Road,
Panaji, Goa Employer/Party II

Workman/Party I represented by Adv. Shri. V. Menezes.

Employer/Party II represented by Adv. Shri P.J. Kamat.

AWARD

(Passed on this 13th day of June, 2013)

In exercise of powers conferred by Clause (d) of sub section (1) of section (10) of the Industrial Disputes Act (Central Act 14 of 1947) (for short the Act) the Central Government by order, dated 16/2/99, referred the following dispute for adjudication by this Tribunal :—

"Whether the action of the management of Bank of Baroda to impose the punishment of withdrawal of special allowance for a further period of five years and warning upon Shri J.T. Shetye vide order dated 12/1/96 is legal and justified? If not, what relief is the workman entitled to?"

2. On receipt of the reference, a case was registered under No. IT/23/1999 and registered A.D. notices were issued to both the parties. Accordingly, both the parties appeared before the Court. Party I filed the claim statement at Exb. 3 and Party II filed the written statement at Exb. 4. Party I then filed the rejoinder at Exb. 5.

3. It is in short the case of Party I that he has been employed with Party II who is engaged in the business of banking through its various branches. That the present reference relates to the punishment awarded to Party I by order dated 12/1/96 and it is raised espoused by the Bank

of Baroda Employees Congress (Goa). It is stated that Party I at the relevant time was employed at the Aldona Branch of Party II as Head Cashier "C" and that his past record is clean, unblemished and meritorious. That at that time he was issued a charge sheet dated 4/4/94 by the Regional Manager (Goa) of the employer alleging certain charges of misconduct against him and he was charged of misconduct in terms of Bipartite Settlement signed between the employer and employees union such as (a) doing an act of indecent behaviour on the premises of the bank (clause 19.5 (c)); (b) doing an act of insubordination/disobedience of lawful/reasonable orders of management (clause 19.5 (e)); (c) doing an act prejudicial to the interest of the bank involving the bank in various loss (clause 19.5 (j)); (d) doing an act of breach of rule of business of the bank (clause 19.7(d) and (e) and doing an act of failing to show proper consideration, courtesy or attention towards officer, customers and employees of the Bank, unseamingly/unsatisfactory behaviour while on duty (clause 19.7 (j)). It is stated that charges leveled against Party I are false and baseless. It is further the case of Party I that a domestic enquiry was held and that he was placed under suspension before issuance of the charge sheet. That the Enquiry Officer gave the report holding that the allegations at sr. no. (c) and (d) are not proved but that all the charges of misconduct are proved against Party I. The Regional Manager (Goa) of Party II then issued notice dated 27/11/95 proposing punishment of "withdrawal of special allowance for further five years" for charges at sr.no. (a) to (d) of the charge sheet and "warning" for the charge at sr. no. (e) therein and he fixed a hearing to afford opportunity to Party I to show cause against the proposed punishment. Party I filed reply dated 21/12/95 to the show cause notice and thereafter the Regional Manager (Goa) of Party II passed the order dated 21/1/96. By virtue of this order, the Party I, was reinstated in service with effect from the date of service of order on him. The union then raised an Industrial Dispute in the matter of punishment awarded to Party I and accordingly the dispute was referred to the Industrial Tribunal for adjudication but as the actual dispute was not referred the Party I filed petition before the Hon'ble High of Bombay at Panaji, Goa for direction to the Government to make a correct reference and accordingly the Central Government referred the dispute between the parties, as mentioned supra.

4. It is stated by Party I that the action of Party II is bad in law, illegal and unjustified; that the action of Regional Manager of Party II of awarding penalties to Party I is without jurisdiction and/or in excess of jurisdiction; that Party I has been punished without any reasonable cause; that the charges of misconduct alleged against Party I are false and baseless; that the charge sheet has been issued without application of mind; that the charges alleged are without substance; that the Enquiry Officer was biased in favour of the management; that the enquiry was conducted in violation of principles of natural justice and fair play and

no adequate opportunity was given to Party I to defend himself; that the enquiry was conducted in breach of the rules and procedure applicable to Party I; that the findings of Enquiry Officer are not based on evidence on record and are perverse; that Party I has been punished for his trade union activities; that the charges of misconduct are not proved on the evidence on record and even assuming without admitting that the charges of misconduct are proved, the punishment awarded to Party I is too harsh and severe. It is thus stated by Party I that he is entitled to an award declaring that the punishment of withdrawal of special allowance for further five years and warning awarded to him is illegal and unjustified and that the management of Party II be directed to restore the said allowance to him and to pay him all arrears arising there from so also quash the order of punishment and direct the management of Party II to place him at the appropriate stage in the pay scale with effect from the date of orders of punishments.

5. In the written statement the defence of Party II in short is that the disciplinary proceedings were instituted against Party I for the acts of misconduct and by order dated 4/4/94-Mr. A.V. Kale, Sr. Manager, Bank of Baroda, Regional Office, Pune was appointed as an Enquiry Officer and Mr. R.S. Doiphode, Manager, Bank of Baroda, Regional Office, Pune was appointed as Presenting Officer by order dated 4/4/94. That the enquiry commenced on 6/5/94 and concluded on 15/9/95. Party I fully participated in the enquiry proceedings in person as well as through Mr. T.H. Naidu, General Secretary, F.O.B.O. & E.C. (Mah. & Goa) of which the Party I was a member. That the Enquiry Officer submitted his findings dated 19/5/95 holding Party I guilty of the allegations at sr. nos. (a), (b), (c), (d), (e) part and (f) of the charge sheet and consequently the Enquiry Officer held that all the misconduct (a) to (e) under the Bipartite Settlement are proved against he Party I, thereafter copy of findings of the Enquiry Officer was submitted to Party I and he was called upon to make his submissions/representation within fifteen days of the receipt of the same. However Party I prayed for further time which was granted to him and filed his submissions/representations but the disciplinary authority concurred with the findings of the Enquiry Officer on the charges proved against the workman and accordingly suggested the punishment. Party I was given opportunity to show cause against the punishment as well as to attend the personal hearing and thereafter the punishment proposed in the show cause notice dated 27/11/95 was awarded vide order dated 12/1/96. Party I preferred appeal against the said order dtd.12/1/96 before the appellate authority but the appeal came to be dismissed. It is stated that the misconducts committed and proved against Party I are major misconducts which deserve punishment of dismissal from the services but Party II took a lenient view and awarded lower punishment in the interest of justice. It is also stated that the action of Party II is just, legal and bonafide and no interference is called for.

6. On the basis of above pleadings of both the parties the following issues were framed at Exb. 6 :—

- (1) Whether the Party I proves that the enquiry held against him is not fair, proper and impartial?
- (2) Whether the charges of misconduct leveled against the party I are proved to the satisfaction of the Tribunal by acceptable evidence?
- (3) Whether the Party I proves that the action of the Party II to impose punishment of withdrawal of special allowance for a further period of five years and warning against the Party I by order dated 12/1/96 is mala fide, illegal and unjustified?
- (4) Whether Party I is entitled to any relief?
- (5) What award?

7. Issue nos. 1 and 2 were treated as preliminary issues and by order dated 8/6/12 issue no. 1 was answered in the negative and the issue no. 2 in the affirmative.

8. Records reveal that matter was then fixed for evidence on issue nos. 3, 4 and 5. In the course of evidence on these issues workman Shri J.T. Shetye examined himself and closed his case. Ld. advocate for Party II did not lead evidence on these issues.

9. Heard Ld. advocate Shri V. Menezes for Party I and Ld. Adv. Shri P.J. Kamat for Party II.

10. In his arguments Ld. advocate for Party I by inviting my attention to the Bipartite Settlement, the nature of misconducts and the punishments prescribed under it viz. a viz the order dated 8/6/12 passed by this court on the preliminary issues stated that vide this order the court has come to the conclusion that Party I is guilty of the charges at (a), (b), (c) and (e) part, levelled against him in the charge sheet dated 4/4/94 constituting misconducts under clause 19.5(c) and 19.7(d) of the Bipartite Settlement. Thus according to him all the misconducts allegedly proved against the workman are to be treated as minor misconducts, considering the nature of punishment prescribed for these misconducts. He also stated that there has been victimization of the workman at the end of the management and that the punishment meted out to him is connected with the victimization. Further he stated that the past record of the workman is clean, unblemished and meritorious and that these aspects deserve to be considered for interfering with the punishment imposed upon the workman. According to him, all the misconducts allegedly proved against the workman are to be fitted under clause 19.7 of the Bipartite Settlement as they are minor misconducts and therefore the punishment imposed has to be under Clause 19.8 of the Bipartite Settlement. By inviting my attention to the order dated 12/1/96 issued by the Regional Manager of Party II he stated that no reasons have been assigned in the same for imposing punishment of withdrawing special allowances drawn by the workman for further five years.

11. On the other hand learned advocate for Party II submitted that since the punishment imposed upon the workman is not of either discharge or dismissal, this court cannot, in terms of Section 11-A of the I.D. Act interfere with the punishment imposed upon the workman. In support of his above submissions he relied on the judgment in the case of General Secretary, South Indian Cashew Factories Workers' Union V/s Managing Dir., Kerala State Cashew Development Corporation Ltd., & Ors 2006 II CLR 959, the relevant extract in which reads as under:

"If enquiry is fair and proper, in the absence of any allegations of victimization or unfair labour practice, the labour court has no power to interfere with the punishment imposed. Section 11-A of the Act gives ample power to the Labour Court to reappraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. Section 11-A of the Industrial Disputes Act is only applicable in the case of dismissal or discharge of a workman as clearly mentioned in the Section itself. Before the introduction of Section 11-A in Indian Iron and Steel Co. Ltd., V. Their Workmen (1958) SCR 667 this Court held that the Tribunal does not act as a court of appeal and substitute its own judgement for that of the management and that the Tribunal will interfere only when there is want of good faith, victimization, unfair labour practice etc. on the part of the management."

12. Learned advocate for Party II further submitted that, though in his affidavit in evidence Party I has stated that charge sheet dated 4/4/94 was issued only to 'victimize' him as he had in the past brought to the notice of the management the irregularities which had been taking place in the Aldona Branch and also because he had joined INTUC Union and not any other union sponsored by the bank, no such averment is found made in the pleadings in the statement of claim and therefore the plea of victimization at the end of management, taken by the workman, cannot be considered. By inviting my attention to the pleadings in para 16(j) of the claim statement he stated that though it is pleaded that the workman has been punished for his trade union activities as well as for non-existent reasons, nothing specific about 'victimization' has been pleaded in this para and therefore it would not be justified to say that the plea of victimization is taken in the claim statement. He relied on the judgment in the case of Regional Manager, SBI V/s Rakesh Kumar Tewari 2006 I CLR 395 in which it is observed that if the plea is not put forward such an opportunity is denied, quite apart from the principle that no amount of evidence can be looked into unless a plea is raised. He therefore contended that in such situation observations in the judgment in the case of South Indian Cashew Factories (Supra) squarely attract to the instant case.

13. In the above context, it is the submission of learned advocate of Party I that the letters written by the workman and which form the part of the enquiry proceedings at Exb.E-1 collily clearly speak about the victimization of the

workman at the end of the management and merely because the specific word "victimization" is not used in the pleadings, the same would not mean that such a plea is not taken in the claim statement.

14. It may be mentioned here that the party taking the plea of victimization has to specifically plead and prove the same. Reliance in this context is placed on the judgment in the case of *M/s. Bharat Iron Works v/s. Bhagubhai Balubhai Patel and Ors.* AIR 1976 SC 98 to highlight the meaning and effect of the term "victimization" and it is observed in this judgment as under:

".....It is apparent that victimization may pertain to various types, to cite one or two only for example pressuring an employee to leave the union or union activities, treating an employee unequal or in an obviously discriminatory manner for the sole reason of his connection with union or his particular union activity; inflicting a grossly monstrous punishment which no rational person would impose on an employee or the like.

A word of caution is necessary. Victimization is a serious charge by an employee against an employer, and, therefore, it must be properly and adequately pleaded by giving all particulars upon which the charge is based to enable the employer to fully meet them. The charge must not be vague or indefinite being as it is an amalgam of facts as well as inferences and attitudes. The fact that there is a union espousing the cause of the employees in legitimate trade union activity and an employee is a member or active office bearer thereof is per se, no crucial instance. Collective bargaining being the order of the day in a democratic social welfare state, legitimate trade union activity which must shun all kinds of physical threats, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the part of the employer..."

It is further observed in this judgment as under:

".....The onus of establishing a plea of victimization will be upon the person pleading it. Since a charge of victimization is a serious matter reflecting, to a degree, upon the subjective attitude of the employer evidenced by acts and conduct, these have to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the Tribunal and a conclusion should be reached on a totality of the evidence produced....."

15. Since the pleadings on the subject of "victimization", as required in the above manner are lacking in the claim statement, the question of looking into the affidavit in evidence of the workman on the above subject,

for holding that such a plea has been taken by the workman in the claim statement, does not arise. The fact therefore remains is that there are no pleadings of victimization or unfair labour practice by the workman and in such situation the question of this court adverting to Section 11-A of I.D. Act to interfere with the punishment imposed, does not arise.

16. This being the situation, it would not be proper, justified and in the interest of justice to hold that the action of Party II of imposing punishment of withdrawal of special allowance for a further period of five years and warning against Party I by order dated 12/1/96 is mala fide, illegal and unjustified. Hence my findings.

17. Issue no. 4: In view of findings on issue no. 3 above, Party I is not entitled to any relief.

18. In the result, I pass the following :

ORDER

1. It is hereby held that the action of the management of Bank of Baroda to impose the punishment of withdrawal of special allowance for a further period of five years and warning upon Sh. J.T. Shetye vide order dated 12.1.96 is legal and justified.
2. No order as to costs. Inform the Government accordingly.

B.K. THALY, Presiding Officer

Place: Panaji

Dated: 13/6/2013

नई दिल्ली, 19 जुलाई, 2013

का०आ० 1739.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एसईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या आई टी/247/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/07/2013 को प्राप्त हुआ था।

[सं० एल-22012/412/1997-आईआर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 19th July, 2013

S.O. 1739.—In pursuance of Section 17 of Industrial Disputes Act, 1947, the Central Government hereby publishes the Award Ref. No. 247/1998 of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of SECL, and their workmen, received by the Central Government on 19.07.2013.

[No.L-22012/412/1997-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

NO. CGIT/LC/R/247/98

PRESIDING OFFICER: SHRI R.B. PATIL

The Deputy Chief Secretary,
Indian National Mines Overman,
Sirdar and Shot Firer's Assn.,
SECL, Ravinagar Colony,
Threemar colliery,
Shahdol

Workman/Union

Versus

The Chairman-cum-Managing Director,
South Eastern Coalfields Limited (Hq.),
Bilaspur (MP)

Management

AWARD

Passed on this 1st day of July 2013

1. As per letter dated 10-11-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/412/97/IR (CM-II). The dispute under reference relates to:

"Whether the 6 demands given in annexure raised by the Indian National Mines Overman, Sirdar and shot-Firer's Association (Known as INMOSSA) are justified? If so, to what relief are the workmen concerned entitled?"

2. After receiving reference, notices were issued to the parties. Union filed statement of claim at page 4/1 to 4/8. Ist party submits that service conditions of all workman including Mining Supervisory Personnel are governed by provisions in Standing Orders. That Indian National Mines Overman, Sirdar and Shot firers Association (INMOSSA) is a registered Trade union. Union has Area Officers and Branch offices in all the areas/units of each subsidiary including SECL. The promotional avenues of Mining supervisory Personnel is to be guided by recommendation of the report. Said committee was constituted by Coal India. The recommendations of said committee is with regard to promotion of Mining Sirdar to post of Safety Cum Production Assistant, Overman, Senior Overman etc. was faithfully implemented. That payment of wage allowance to overman, Mining Sirdar of all opencast Mines. The charge handing and taking over allowance was introduced in Coal India since 1978. It was applicable to all mining supervisory personnel holding Mining Sirdarship Certificate, Overmanship certificate and shot firer's certificate. That as to demand No. 3 for training to Mining Sirdar as overman about solid blasting is essential. That fixation of the blasting holes, there are three types of mines i.e. Degree I, II & III. Degree I Mine-Maximum limit is 100

detonators per shift, Degree II/III mine, maximum limit is 80 detonators per shift. Giving other details of working hours, Union submits that all demands of Mining supervisory Personnel be extended as per R.N. Mishra Committee Report.

3. IInd party filed Written Statement at Page 5/1 to 5/4. It is submitted that the Staffing pattern for mining personnel was approved in 1991 applicable to Coal India as a whole. The submissions of Association about R.N. Mishra Committee is clarified that said report was recommendatory and not obligatory for management as Ist party wrongly alleged about it. It is denied that said committee was constituted by CIL for Coal India Ltd. It is further submitted that permission of mining sirdar to production from safety assistant and overman is subject to availability of sanctioned vacancies as per staffing pattern. The promotion is based on vacancies. IInd party further submits that number of post operated in T&S Grade D as Production cum Safety Assistant would be 15% of total strength, in Grade A would be 15% and Grade C-150 posts in T&S Grade B and 23 posts will be operated in T&S Gr.A.

4. It is further submitted that Mining Sirdar engaged in OCM are not entitled to receive charge allowance. The payment of charge allowance is subject to actual charge handed over and taken over in mine in a particular section. That solid blasting is not a new technique in the mine. It had been in use for more than 3 decades. Therefore Mining Supervisor personnel who acquires certificate of competency examination as Mining Sirdar or Overman should have the knowledge of 3rd requisite for the post. That the claim of Ist party is based on presumption. On such grounds, IInd party prays for rejection of claim under reference.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | | |
|------|--|---------------------------------------|
| (i) | Whether the 6 demands given in Annexure raised by the Indian, National Mines Overman Sirdar and shot-Firer's Association (Known as INMOSSA) are legal and justified? | In Negative |
| (ii) | If so, to what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

6. Though dispute under reference relates to 6 demands of the Union as given in detail in statement of claim, Union/Association has not adduced any evidence. The Association failed to submit evidence and evidence of Union was closed on 28-2-2011.

7. Witness of management R.B.P. Sahi filed affidavit of his evidence giving details of staffing pattern and number of posts to be operated in T&S Grade-A, B & C. The staffing pattern for mining personnel is circulated by CIL in 1991. It is uniformly applicable to Coal India as a whole. That the report of R.N. Mishra Committee was recommended and obligatory on the management. However as a gesture of goodwill, request of INMOSSA was accepted and payment of charge allowance to Mining Sirdar Personnels working in OCM was started. Circular dated 30-11-98 and 18-01-99 issued by the management that solid blasting is old technique used more than 3 decades. Knowledge of solid blasting is essential for candidates for examination being conducted by the DGMS for Mining sirdars and overman. The evidence of management witness remained unchallenged. Union failed to participate in reference proceeding. Considering the unchallenged evidence of management's witness, no evidence adduced by Union to substantiate its demands. Therefore I record my finding in Point No. 1 in Negative.

8. In the result, award is passed as under:—

(1) All the 6 demands of Union/Association are rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जुलाई, 2013

कांआ 1740.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 298/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/07/2013 को प्राप्त हुआ था।

[सं एल-22012/130/1999-आईआर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 19th July, 2013

S.O. 1740.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 298/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL, and their workmen, received by the Central Government on 19/07/2013.

[No. L-22012/130/1999-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/298/1999

PRESIDING OFFICER: SHRI R.B. PATLE

The Secretary,
R.K.K.M.S. (INTUC),
PO Chandametta,

Distt. Chhindwara (MP)

....Workman/Union

Versus

The Chief General Manager,
WCL, PENCH AREA,
PO PARASIA,
Distt. Chhindwara (MP)

....Management

AWARD

Passed on this 1st day of July 2013

1. As per letter dated 31-8/8-9-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/130/99-IR (CM-II). The dispute under reference relates to:

"Whether the action of the Chandametta Colliery, PO Chandametta, Distt. Chhindwara (MP) in not correcting the date of birth of Shri Salim Khan S/o Ahmad Khan, Elect. Fitter Helper is justified? If not, to what relief he workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party failed to file Statement of Claim. Ist party workman is proceeded exparte on 9-7-09.

3. The management of IInd party filed Written Statement. It is submitted by management that workman was initially appointed as General Mazdoor w.e.f. 20-3-73. He was promoted to post of Fitter Helper/Trammer and posted at Chandametta Colliery for WCL, PENCH AREA. As per provisions of Mines Act, statutory registers are required to be maintained. The personal numbers of all employees are mentioned in registers. The photo of employee is to be affixed in Form B register. The entries on said register is based on information furnished by workman. Union raised issues regarding correction of date of birth of employees. As per Instruction No. 37 and 76, it deserves to be in order. That Instruction No. 76 also provides for the review and determination of date of birth of existing employees. The decision of Age Determination Committee is final and binding. IInd party request for rejection of claim of Ist party workman.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under.

My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---------------------------------------|
| (i) Whether the action of the Chandametta Colliery, PO Chandametta, Distt. Chhindwara (MP) in not correcting the date of birth of Shri Salim Khan S/o Ahmad Khan, Elect. Fitter Helper is justified? | In Affirmative |
| (ii) If so, to what relief the workman is entitled to?" | Relief prayed by workman is rejected. |

REASONS

5. As stated above, though terms of dispute under reference relates to IInd party not correcting date of birth of workman Shri Salim Khan, no statement of claim is filed to substantiate the claim under reference. No evidence is adduced in support of the claim. Workman has not participated in reference proceeding.

6. The witness of management Shri M.B. Kumbhare filed affidavit of evidence supporting contentions of the management of IInd party. The case of workman was referred to Age Determination Committee. The workman could not produce any document or evidence in support of his claim. The Committee had confirmed date of birth of workman was 1-7-1941. The evidence of management's witness remained unchallenged as the workman failed to cross-examine him. I do not find reasons to disbelieve his evidence. For above reasons, the action of IInd party cannot be said illegal. Therefore I record my finding in Point No. 1 in Affirmative.

7. In the result, award is passed as under:—

1. The action of the management of W.C.L., Chandametta Colliery, PO Chandametta, Distt. Chhindwara (MP) in not correcting the date of birth of Shri Salim Khan S/o Ahmad Khan, Elect. Fitter Helper is legal.
2. Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जुलाई, 2013

का०आ० 1741.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एफ सी आई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 66/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/07/2013 को प्राप्त हुआ था।

[सं० एल-22012/384/1999-आईआर (सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 19th July, 2013

S.O. 1741.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of FCI, and their workmen, received by the Central Government on 19/07/2013.

[No. L-22012/384/1999-IR (CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/66/2000

PRESIDING OFFICER: SHRI R. B. PATLE

Shri Nagraj Sonkar,
House No. 40/424,
Sonkarpara, Purani Basti,
Raipur

....Workman

Versus

The District Manager,
Food Corporation of India
District Office,
Kutchery Chowk,
Raipur (MP)

....Management

AWARD

Passed on this 1st day of July 2013

As per letter dated 29-2/7-3/2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/384/99-IR (CM-II). The dispute under reference relates to:

“Whether Shri Nagraj Sonkar claiming himself to be a peon for providing water etc. is a workman under Section 2(s) of the I.D. Act, 1947? If so, whether his termination by the management of FCI w.e.f. 5-3-99 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed his statement of claim at Page 3/1 to 3/3. The workman submits that he was appointed by IInd party as peon to provide drinking water on 9-4-96. His services were orally discontinued from 5-3-99 without notice. He further submits that he had completed 240 days continuous service as provided in Section 25-B of I.D. Act. He was not given one month notice or pay in lieu of one month notice. That he was required to work as waterman as sprinkling water on Khas Patti, he was paid Rs. 1400 per month. Monetary provisions of Section 25-F were not followed while terminating his services. He was not paid retrenchment compensation. The provision of

Section 25-G, H were not followed. As such termination of his services is illegal. He prays for reinstatement with consequential benefits.

3. Management filed Written Statement at Page 5/1/ to 5/3. He denied that workman was appointed as peon. It is denied that he worked continuously for more than 240 days as provided under Section 25-B of I.D. Act. According to IInd party, workman was engaged on daily wages for sprinkling water on Khas patti during summer days. His name was received from office of Collector. He had completed 240 days continuous service. Workman was engaged for about 2 months. He was also subsequently engaged for same period. Wages were paid for it. The services of workman were engaged by sprinkling water on Khas patti during summer. It is denied that he was paid Rs. 1400 per month. All other contentions of workman are denied. It is submitted that the services of workman were terminated after summer days. His service were not terminated. It was not necessary to pay retrenchment compensation. IInd party prayed for rejection of claim.

4. Workman filed rejoinder at Page 13/1 to 13/2. He reiterates his carrier contention in Statement of Claim. He submits that his services are terminated in violation of Section 25-F of I.D. Act and prays for reinstatement.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether Shri Nagraj Sonkar claiming himself to be a peon for providing water etc. is a workman under Section 2(s) of the I.D. Act, 1947?	In affirmative
(ii) Whether the termination of workman by the management of FCI w.e.f. 5-3-99 is legal?	In affirmative
(iii) If so, to what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

6. As per terms of reference, the parties are in dispute whether the Ist party is a workman under Section 2(s) of I.D. Act. As per the pleadings of parties, workman was engaged for sprinkling water on Khas Patti during summer days. Whereas workman says that he was appointed as peon against vacant post. Pleadings of the parties are silent that the workman was appointed on supervisory or managerial post paying salary above Rs. 1600 per month. The definition of workman under Section 2(s) of I.D. Act is reproduced for convenience:—

"workman means any person 9 including as apprentice) employed in any indstry to do any

manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this is in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge of retrenchment has led to that dispute, but does not include any such person—

(i) Who is subject to the Air Force Act, 1950 or the Army Act, 1950 etc."

7. Workman filed affidavit of evidence at page 15/1 to 15/2. Workman was not cross-examined. Management filed evidence of his witness Shri Isak Tirki. His evidence also remains unchallenged. Looking to the evidence or record and pleadings of both parties, I held that Ist party workman is covered as workman under Section 2(s) of I.D. Act. Therefore I answer Issue No. 1 in Affirmative.

8. **Issue No.**—Termination of workman is challenged. Workman filed affidavit of his evidence contending that he had completed 240 days continuous service. He was working continuously as peon from 9-4-96 to 5-3-99. He was working as waterman. The payment was not for specific purpose. Workman was not cross-examined. Management's witness also not cross-examined. Workman remained absent and failed to participate in the reference proceeding. As workman was not examined, his evidence cannot be accepted. The evidence of management's witness remained unchallenged and I find no reason to disbelieve his evidence. Workman has failed to establish that he was continuously working for 240 days preceding his date of termination and therefore compliance of section 25-F of I.D. Act is not necessary. For above reasons, I record my finding in Point No. 2 in Negative.

9. As a result, award is passed as under:—

- (1) Ist party Shri Nagraj Sonkar is covered as a workman in I.D. Act.
- (2) Termination of workman by the management of FCI w.e.f. 5-3-99 is proper.
- (3) Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जुलाई, 2013

का०आ० 1742.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 197/1998)

को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/07/2013 को प्राप्त हुआ था।

[सं० एल-22012/138/1997-आईआर(सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 19th July, 2013

S.O. 1742.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 to 1947) the Central Government hereby publishes the Award (Ref. No. 197/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial dispute between the management of WCL, and their workman, received by the Central Government on 19/07/2013.

[No. L-22012/138/1997-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/197/98

PRESIDING OFFICER: SHRI R. B. PATLE

Vice President,
Pench Kanhan Koyla Khadan
Karmchari Sangh,
Post Damua,
Distt. Chhindwara (MP)

Workman/Union

Versus

Dy. C.M.E.,
Tandsi Project, WCL,
Post Rampur, Via Damua,
Distt. Chhindwara

Management

AWARD

Passed on this 25th day of June, 2013

1. As per letter dated 20-8-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/138/97/IR (C-II). The dispute under reference relates to:

"Whether the action of the management of Tandsi Project of WCL, Kanhan Area PO Rampur Via Damua, Distt. Chhindwara (MP) in refusing to regularize their own employees Shri Amar Kumar Dixit and 74 others when they are employed for last about more than two years and terminating the stoppage of work w.e.f. 27-12-95 without complying with the Section 25(F) of the Industrial Dispute Act is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party Union submitted Statement of Claim

at Page 7 to 29. The case of the Ist party is that the contract under CL (R&A) Act was arrived between IInd party and contractor M/s. Shakti Kumar M. Sancheti, Nagpur for cutting and driving the Stone Drifts No. 3 & 4 of the Tandsi Project. That Amar Kumar Dixit and 74 other were employed by the said contractor on the work of cutting stone. The stone drift/mines were driven from Surface to coal seam in 1000 meters of depth into earth during the period 1-1-94 to 31-12-95. The contractor was paying less wages than the employee directly employed by WCL. That as per letter dated 20-9-95 under Section 22(1) of I.D. Act submitted to the Manager, WCL and other officers, copy was addressed to ALC; Chhindwara and other authorities. There was settlement between the contractor and those employees on 31-11-95. It was agreed that the contractor would pay wages as per NCWA. Form B registers were checked by representative and found correct. The employment card of employees had been issued to the concerned workman. Attendance of employees in respective forms were to be checked and verified within 15 days from the date of settlement.

3. That as per agreement, wages were paid in different scale of wages as per NCWA and linked to AICPI Index but they were illegally terminated and thrown out of service.

4. It is submitted that CL (R&A) Act prohibits employment of contract labours. That notification was issued by Government of India dated 5-2-75 prohibiting employment of contract labours by raising-cum-selling of coal, coal loading and unloading, overburden removal and earth cutting, soft coke manufacturing, driving of stone drifts and miscellaneous stone cutting underground. The said notification was amended on 21-6-88. The employment of contract labours was prohibited in the coal mines in above areas of the work. The notification provided for exemption of quarries located by the side of Pench river etc. The Union further submits that once the question of requirement is considered and recommendation for abolition was accepted by the appropriate Government, the matter cannot be taken for reconsideration. Union has referred to ratio held in different cases by the Hon'ble Supreme Court.

5. The Union further submits that management of IInd party admitted before Conciliation Officer that driving of stone drifts is to be undertaken for purpose of winning coal and raising it which is found under the stone strata or seam. The work of WCL is not a mining of stone but has to make arrangement for mining of coal by removing the obstacles created by any such stone seam. The Union further referred judgments/ratio held by the Supreme Court in different cases. That the contract of work process and operation of driving of stone drift in incline No. 3-4 of Tandsi Project of WCL is sham and therefore the contract labour, Shri Amar Kumar Dixit and 74 others employed in Tandsi Project are entitled to absorption by the WCL. Union further submits that management violated Section 25-F of

I.D. Act. The management of WCL is deemed employer. It is also alleged that their retrenchment is violative of Article 14, 15, 16 & 21 of the Constitution of India. That in case contractor fails to make payment of wages to contract labours, Principal Employer is responsible to pay wages full and final. The difference of wages between NCWA-IV and NCWA-V is due for the period of employment. On such grounds, Union submits that labours employed by contractor are entitled to reinstatement and treated as regular employees of WCL.

6. Management of IInd party filed Written Statement at Page 91/1 to 91/20. IInd party submits that the order of reference speaks about termination and stoppage of work w.e.f. 27-12-95 in respect of claimant Shri Amar Kumar Dixit and 74 others. The present dispute raised after 3 years is belated. It is not tenable. The terms of reference are illegal as appropriate Government has gone into disputed questions of fact while making the reference. It is beyond scope of the Tribunal. The reference is liable to be rejected. The order of reference shows that Government has decided that there existed employer employee relationship prior to the termination. The claimants were never employed by WCL. There was not stoppage of work from 27-12-95. The claimants were not in employment of WCL. There is no question of retrenchment in violation of Section 25-F of I.D. Act. The reference is not legal.

7. Management submitted representation to the Secretary, Ministry of Coal for cancellation or modification of reference. Vide letter dated 3-2-2000, Ministry expressed its inability to make any amendment in the reference. The management had submitted application dated 25-8-2000 before this Tribunal whether the terms of reference are legal and justified. That the Court can pass order holding the reference illegal. It is further submitted that the Union has no locus-standi to raise the dispute as it had no followers. The terms of reference have not been properly drawn up and therefore the order of reference is vitiated. That Shri P.K. Bannerjee, General Secretary of SKMS Union had raised the dispute claiming services of 350 contract labours and said dispute was referred vide order No.L-22012/40/97 dated 24-4-98 (R/83/98). That the employees covered under present reference are also claimants in the said reference, the reference is not tenable.

8. Union claimed that Amar Kumar Dixit and 74 employees were in employment of contractor M/s. Shakti Kumar M. Sancheti for work of cutting and driving Stone Drifts No. 3 & 4 of the Tandsi Project of Kanhan Area. The said stone drifts/mines were driven from the surface upto coal seam in 1000 meters of depth into earth. That Coal India is a company registered under the Indian Companies Act. The wage structure and other benefits of Coal India are covered by recommendations of central Wage Board for Coal Mining Industry. The service conditions and wage structure is revised time to time jointly known as NCWA.

That appointments in CIL are governed by statutory rules and regulations. The persons seeking employment have to undergo the process prescribed. That names are required to be sponsored through Employment Exchange. It is further submitted that the public employment is guaranteed under Article 16 of constitution. If the contractors workers are regularized, the right of the public employment would be violated. It is further submitted that mines are governed by Mines Act and Regulations. That under the Mines Act, it is mandatory to maintain Form B,C,D of Coal Mines, Provident Fund Scheme, contributions are deducted.

9. That management issued tender notice No. 1 of 93-94 dated 2-4-93 for execution of work of Drivage of Incline No. 3 & 4 of Tandsi Project. The details of work are given. The length of Incline No. 3 is 964 meters, incline No. 4 is 963 meters. The time limit for completion of work was 32 months. Contract was awarded to M/s. Shakti Kumar M. Sancheti for amount of Rs. 10,18,43,000/-. The contractor was issued letter of indent on 5-11-93. The agreement was executed on 8-2-94. Completion certificate was issued by management on 23-3-96. That notification issued on 21-6-88 by Govt. of India prohibits driving of stone drift in underground doesnot specifically or even by implication prohibits driving of stone drifts on surface. By said notification, driving of stone drifts underground which could not be detected has been permitted. That work of driving stone drift is of temporary nature and is to be undertaken for the purpose of winning of Coal and raising, which is found under the stone strata or seam and thus the work of WCL is not a mining of stone. It is preparatory work for mining of coal given to the contractor.

10. That contractor M/s. Shakti Kumar M. Sancheti was holding valid licence for engaging 95 contract labours. The licence No. 820/93 dated 31-12-93 was renewed till 31-12-95. The settlement between contractor and the representative of Union is not disputed. The other contention of the Union are denied. It is denied that contractor was not awarded contract under provisions of CL (R&A) Act. The contract was awarded for purpose of execution of work. The labours were engaged by the contractor. It is duty of contractor to maintain various registers by respect of labours engaged by him. After execution of agreement, work order was issued on 8-2-94. The particulars of labours engaged by contractor, the charges paid to them were required to be maintained by the contractor himself. That provision of NCWA are applicable to regular employees of WCL and not applicable to the labours engaged by contractor. It is reiterated that work of driving stone of temporary nature was under taken for purpose of raising coal and selling it. Management never executed work prohibited under CL(R&A) Act through contract labours. The work of drivage of incline 3, 4 awarded to M/s. Shakti Kumar M. Sancheti is not of prohibited category. Tenders were invited. Successful contractors were issued work order. Agreement was executed between

contractor and management. The contractor produced labour licence. The claimants are not entitled for absorption in WCL.

11. That IInd party further submits that claimants were not engaged by management of WCL, they were engaged by contractor. Their services were not terminated by WCL management in violation of section 25(F) of I.D. Act. Violation of Article 14, 15, 16 & 21 of the Constitution of India is denied. It is contended that relationship of master and servant exists between contractor and labours engaged by him. There is no such relationship with the Principal Employer. The recruitment was not made in compliance of the statutory rules and procedure prescribed for appointments in WCL. That the labours engaged by contractor are not entitled to automatic absorption under CL(R&A) Act. On such grounds, IInd party prays for rejection of claim of the Union.

12. Rejoinder is filed by Union reiterating its earlier pleadings and prays for reinstatement in service of Shri Amar Kumar Dixit and 74 others.

13. Considering pleading on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Tandsi Proejct of WCL Kanhan Area Po Rampur Via Damua, Distt. Chhindwara (MP) in refusing to regularize their own employees Shri Amar Kumar Dixit and 74 others when they are employed for last about more than two years and terminating the stoppage of work <i>w.e.f.</i> 27-12-95 is legal?	Shri Amar Kumar Dixit and 74 others were engaged by contractors. Their services are terminated by contractor and not by management of WCL.
(ii) If so, to what relief the workman is entitled to?"	Claimants Amar Kumar Dixit and 74 others are not entitled to absorption prayed by them.

REASONS

14. The IInd party argues that, reference is contented to be illegal. That the terms of reference are not properly made and the reference cannot be decided by this Tribunal. Such pleadings are raised in the Written Statement filed by IInd party. The statement of claim filed by Ist party refers that claimants were engaged by contractor for completion of work of permanent nature driving of stone drift of Incline No.3 & 4. That the work of driving stone was prohibited by

Central Government *vide* Notification dated 5-2-75 amended on 14-6-88 as per pleadings in para-5,6 of the Statement of Claim. However the terms of reference is not clear that Shri Amar Kumar Dixit and 74 others were employed by the contractors illegally and they had become regular employees of the Principal Employer WCL.

15. Learned counsel for IInd party Mr. Shashi on above point relies on ratio held

"In case of Pottery Mazdoor Panchayat versus Perfect Pottery company held in 1979-S.C.-1356. Their Lordship of the Apex Court held the jurisdiction of the Tribunal in industrial disputes is limited to the points specifically referred for its adjudication and to matters incidental thereto and the Tribunal cannot go beyond the terms of reference. Where the very terms of references showed that the point in dispute between the parties was not the fact of closure of its business by the employers and the references were limited to the narrow question as to whether the closure was proper and justified, the Tribunals by the very terms of the references had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was infact closed down by the management."

In present case, the terms of reference is that Shri Amar Kumar Dixit and 74 others were employees of Tandsi Project of WCL, Kanhan Area. It doesnot refer to that they were employees of contractor and acquired status of regular employees of Tandsi Project, WCL. As argued by learned counsel for IInd party Mr. Shashi, the terms of reference are not covering dispute that the labours engaged by contractor have acquired status of regular employee of Tandsi Project, WCL the labours were engaged in prohibited category of work or permanent nature of work. Therefore the powers of this Tribunal are restricted to decide the dispute as per the terms of reference itself.

16. The Union adduced evidence of Mohd.Sharif Kureshi S/o Sheikh Munshi, Amar Kumar dixit S/o Sitaram Dixit and Shri Dinesh Kumar Tripathi. In their affidavit of evidence, they have stated that WCL had engaged contractor. M/s. Shakti Kumar M.Sancheti in Tandsi Project. All those 75 workers were engaged by contractor. They have stated that those labours were engaged for work of permanent nature. That NCWA-IV prohibited work of permanent nature from contractors labour. Their evidence is further devoted to settlement dated 31-11-95 between, contractor and labours engaged by him. That the contract labours and regular employees were engaged on said work. Form B of the claimants were prepared. That the labours were discontinued from 27-12-95 in violation of Section 25-F of I.D. Act. The contract labours were engaged for work of permanent nature. The work of raising and selling of coal, driving of stone drifts is prohibited for contract labours. The contract labours were engaged for the said

work. Copy of Notification dated 21-6-88 is produced. It prohibits work of raising or selling of coal, coal loading and unloading, overburden removal and earth cutting, soft coke manufacturing, driving of stone drips and Miscellaneous stone cutting underground. Said notification also clearly provides that it shall not apply to (a) quarries in the North East coal field which can only be worked for a few months every year due to heavy rainfall in the area; (b) Quarries located by the side of river in pench valley and similar other patch deposits which can only be worked when the level of river has gone down and during non-rainy seasons; However Union has not adduced any evidence with regard to proviso (b) of said notification. No arguments are advanced by learned counsel for 1st party in that regard.

17. As the parties are in dispute whether the workman engaged by contractor acquires status of regular employee of IInd party WCL, Tandsi Project. The evidence in cross-examination of witness of 1st party needs to be considered. Mohd: Sharif in his cross-examination says contractor was M/s. Shakti Kumar M. Sancheti. The work of Stone drifting, mud cutting, removal of earth was allotted to said contractor. He claims ignorance about any agreement between contractor and IInd party. He denies that work of repairing road was allotted to the contractor. He denies that he was allowed work on contract basis and engaged by the contractor. He claims to be the member of the Union but he was unable to tell the name of Office bearer of the Union. He claims ignorance about R/83/98 filed by SKMS Union. He says that application for leave was submitted to the representative of the contractor. His signatures were obtained on register about Payment of Wages. He claim ignorance whether Form B register was prepared by contractor. He denies that he was engaged by contractor for prohibited work. He claims ignorance whether work of Incline No.3,4 of Tandsi Project was not assigned to the contractor. He has stated that contractor was maintaining his account of wages. The wages were paid by contractor in presence of the Labour Officer.

18. Witness Amar Kumar Dixit in his cross-examination, has also deposed that he was not engaged on work by WCL, he and 74 others were engaged by contractor. He was working at the work assigned to the contractor. Though he claimed to be members of the Union and paid contribution he was unable to tell the name of the office bearer. He claims ignorance about filing of Reference 83/98 by SKMS Union. The copy of Notification dated 21-6-88 is produced alongwith affidavit. That the contractor denied work from January 1994 to December 1995. The work was not completed within 6' months. It equires 2 years for completion. He claims ignorance whether the contractor M/s. Shakti Kumar M. Sancheti was holding licence for engaging contract labours.

19. Shri Dinesh Kumar Tripathi in his cross-examination says that he doesnot know the name of

President of the Union. He could not tell the names of office bearer. He admits that M/s. Shakti Kumar M. Sancheti was engaged as contractor by WCL but he claims ignorance about the agreement what work was assigned to said company in Tandsi Project. The work continued from Feb-1994 to December 1995. 'After completion of work, the contractor discontinued them from work. The evidence is clear that all claimants were engaged by contractor and services were discontinued by the contractor himself.

20. The documentary evidence produced by Union is Exhibit W-1. Copy of order of reference, W-2 is copy of order in special leave application dated 23-3-2001, W-3 copy. of special leave petition. Those documents are hearing for adjudication of the controversy. Exhibit W-4 is copy of Notification dated 25-6-88 .prohibiting contract labours to do the work of drivage of stone drifts and its proviso (b) exempts quarries located in page 12. As stated above, no satisfactory explanation in this regard is submitted in pleadings and arguments by counsel for 1st party. Exhibit W-5 is copy of NCWAIV. Clause 11.50 prohibits working of permanent nature by contract labour, Exhibit W-9 is settlement between contractor and workmen. Said settlement clearly shows that the dispute about payment of wages, bouns, attendance , maintaining form B etc. was resolved between contractor and its employees i.e. the present claimants. Exhibit W-10 is copy of rejoinder submitted before Conciliation Officer, Exhibit W-11 are copies of receipts of contribution paid to the Union, Exhibit W-12 is copy of NCWF. Relevant provisions provides employment of contract labours for permanent work. Exhibit W-14 is licence of contract labour. Name of M/s. Shakti Kumar M. Sancheti is contractor till 30-12-94 only. Thought the IInd party has pleaded in Written Statement about invalidity of licence in December- 1995, documents are not produced in that regard. It is sufficient to say that contractor was holding valid licence till December 1994. That the engagement of contract labours ws prohibited on work of permanent nature as per Exhibit W-1 and Notification dated 21-6-88.

21. The management has adduced evidence of Shri K. Raja Prabhakaran, Roopchand Sanodiya, S.N. Dubey, Shyam Kumar Chourasiya, Pancham Khadepure, Shri Hari Prasad Soni, Omkar Prasad, V. Subbarao and Bharat Bhushan Sharma. They tried to support contentions of the management that contractor was engaged for doing work was not permanent nature. The labours were engaged by contractor. The contractor was liable for payment of wages. The settlement arrived between the contractors and labours engaged by him. That contract labours were not engaged for work of permanent nature. Execution of agreement and work order by the management that the services of contract labours were not terminated by the management of WCL. Counsel for 1st party Mr. Verma pointed out my attention to evidence in cross-examination of management's witness. Shri K. Raja Prabhakaran in his cross-examination says that licence of contractor was till

31-12-94. Contractor had licence to engage 95 workers. He used to remain present Conciliation Officer as representative of the management. He denied suggestion that he was deposing false to support claim of management. From his evidence in cross-examination and document Exhibit W-14, it is clear that licence of contract labour was valid till December 1994. Shri Roop Chand Sanodiya in his cross examination says under Mines Act, work is carried three types. Type I is Pit shaft, No. 2 is opencast and No. 3 is Incline drift was carried in 1994-95. That contractor requires licence under CL(R&A) Act. The employer does not require licence. The employer needs certificate of registration but not licence. That WCL has not obtained licence for 94-95. As per licence, contractors were authorized to engage 95 labours. As per NCWA-III, IV, contract labour cannot be engaged for work of permanent nature. Shri S.N. Dubey in his cross-examination says that the work of digging was done by permanent labours. The work in Incline No. 3, 4 was done by contract labours engaged by M/s Shakti Kumar M. Sancheti. Shri Shyam Kumar Chourasia in his cross-examination says that he was unable to tell the names of any employees out of 33 shown at Page 2 of his affidavit. That he was working in Tandsi Mine No. 1. His detailed evidence on other points remained unchallenged. In his evidence Shri Hari Prasad Soni, he says that he is not concerned with Incline No. 3, 4. Shri Pancham Khadepure also says that he was working in Incline 1, 2 did not work in Incline 3, 4. Shri Bharat Bhushan Sharma in his cross-examination says that he was working in Tandsi project from 1991 to June 1994. That work of Incline No. 1, 2 were carried through departmental labours. He further says that the work undertaken was of permanent nature. The contract labours were also engaged for said work. That as per provisions of CL(R&A) Act contract labours cannot be engaged for permanent work. That contract labours were engaged for drifage work from surface to underground. Shri V. Subbarao in his cross-examination says that the work of open case mine underground mining was of permanent nature. That the work of raising coal, coal loading and unloading, overburden removal and earth cutting etc. were of permanent nature. Normally work of permanent nature is extracted from permanent workers. Contract labours are not engaged. That the work of permanent nature was of prohibited category for contract labours. Shri Omkar Prasad in his cross examination says that he is not concerned with the work of Mining. He was appointed in WCL in 1976. In 1990 he was working in Tandsi colliery. The work of Tandsi project is carried at surface mining and open cast. Under ground mining is also undertaken.

22. From oral and documentary evidence discussed above, it is clear that despite of Notification dated 21-6-88 and provisions under NCWA-III & IV the contract labours were engaged on work of permanent nature. So far as Notification dated 21-6-88, the quarries in mine valley are

excluded, any kind of explanation in that regard is not found on behalf of Union are not advanced on this point by learned counsel for Ist party.

23. Learned counsel for Union submits as contract labours are engaged for prohibiting category of work, in violation of Notification and provisions of NCWA, the agreement executed in favour of the contractor is against public policy and as such void. Learned counsel further submits that as contract labours are engaged in violation of Notification in NCWA, they are legally claiming for absorption as regular employees of Ist party WCL. In support of his argument, learned counsel heavily relies on ratio held in.

Case of Steel Authority of India Ltd. and others versus National Union Waterfront Workers reported in 2001(7) SCC-1. My attention was pointed out to Para 53, 68 & 125 of the judgement.

Para-53 deals with Notification dated 9-12-1976 issued by Central Government under Section 10(1) of CL(R&A) Act prohibiting employment of contract labours from 1-3-77 found non-sustainable.

Para 68 of the judgment also deals with Section 10(1) of CL(R&A) Act which empower the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment, lays down the procedure and specified the relevant factors which shall be taken into consideration for issuing notification under Section 10(1) of I.D. Act.

In Para 125 of the judgement, their Lordship concluded upshots of their discussion. In Para 125(3) their Lordship reduced conclusion that neither Section 10 of CL(R&A) Act nor any other provision of the Act whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned."

In Para 125(4), the judgement in AIR India case is prospectively overruled. In Para 125(5) their Lordship held on issues of prohibition Notification under Section 10(1) of the CL(R&A) Act prohibiting employment of contract labour or otherwise in an Industrial Dispute brought before it or any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment under

a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder.

Para 125 of the above judgment does not indicate that the contract labour is entitled to absorption if he is illegally employed for work of permanent nature in violation of any Notification or provisions of NCWA.

24. The question arises whether the 1st party proves from evidence that the agreement executed in favour of contractor M/s. Shakti Kumar M. Sancheti is mere ruse or camouflage. In this regard, reliance is also placed by Shri Verma on ratio held in :

Municipal Corporation of Greater Mumbai Versus K.V. Sharmik Corporation of Greater, Mumbai reported in 2002(4) Supreme Court Cases 609. Their Lordship held it cannot be concluded that labour contract was sham or camouflage, its finding must be recorded based on evidence by Industrial Adjudicator. In para-19 their Lordship held that Union in the writ Petition alleged that the labour contract was sham and the Corporation specifically denied it but the High Court did not go into the question and did not record a finding that the labour contract in the present case was a sham or a camouflage considering the material on record, even otherwise this being a serious and disputed fact the High Court could not have appropriately adjudicated on the issue exercising jurisdiction under Article 226 the High Court proceeded to conclude that the labour contract was not genuine and the workers of the Union were employees of the corporation because the corporation and the contractors had not complied with the provisions of the CLRA Act. A conclusion that the contract was a sham or it was only a camouflage cannot be arrived at as a matter of law for non-compliance with the provisions of the CLRA Act but a finding must be recorded based on evidence particularly when disputed, by an industrial adjudicator."

The facts of the present case are not comparable. In present case, the evidence of witnesses of 1st party in their cross-examination have stated that they were engaged by the contractor, they were paid wages by contractor and registers were signed by them in presence of labour officers. Their evidence is absolutely silent that any of them were engaged by the Principal Employer. Their evidence is silent how the agreement executed in favour of contractor M/s. Shakti Kumar M. Sancheti is camouflage. On the other hand, documents produced by union, settlement Exhibit W-9 shows that they were employees engaged by the contractor.

25. Learned counsel for 2nd party Mr. Shashi on the point relies in ratio held :

In case of General Manager (OSD) Bengal Nagpur Cotton Mills, Rajnandgaon and Bharat Lal and another reported in 2011-I-LLJ-321(SC). Their Lordship held that two well recognized tests to find out whether an employee was contract labour or direct employee were payment of salary and control and supervision of employee.

In present case, the evidence in cross-examination of witnesses of 1st party shows that they were engaged by contractor, they were paid wages by contractor and they were working under supervision and control of contractor and therefore the agreement executed in favour of M/s. Shakti Kumar M. Sancheti cannot be said camouflage.

26. Reliance is also placed in—

Airport Authority of India, Mumbai and Indian Airport Kamgar Union and others reported in 2011-I-LLJ-21 (Bom). Their Lordship held the contention of award proceeded on a fundamentally erroneous premise that the nature of contract labourers work brought them within the scope of workmen under Industrial Disputes Act. That basis suffered from a fundamental error and disregarded the ground realities of such work."

In case of workmen of Nilgiri Coop.MKT Society Ltd. reported in 2004(3) Supreme Court Cases 514. In Para-37, their Lordship held the control test and the organization test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the court is required to consider several factors which would have a bearing on the result (a) who is the appointing authority, (b) who is the paymaster, (c) who can dismiss, (d) how long alternative service lasts, (e) the extent of control and supervision, (f) the nature of the job e.g. whether it is professional or skilled work, (g) nature of establishment, (h) the right to reject."

In present case, the evidence on record shows that all the claimants were engaged by the contractor as such appointment authority, wages were paid by the contractor, services were discontinued by the contractor,. Thus the evidence on record cannot establish that the agreement with contractor was mere camouflage. The burden lies on the Union to prove that agreement is sham but the burden is not discharged by adducing satisfactory evidence.

In case of International Airport Authority of India versus International Air Cargo workers Union and another reported in 2009(13) Supreme Court Cases 374, their Lordship held whether the direction and control is with principal employer or with contractor, has to be determined with reference to factors like who pays salary who has power to initiate disciplinary action, to remove/dismiss employee from service, who can tell employee the way work should

be done, etc. However where contract is merely to supply labour only, contract labour is bound to work under supervision of principal employer, in such a situation, primary control still vests with contractor and not with Principal Employer.

The evidence discussed above merely shows that all these employees were engaged by contractor, they were paid wages by contractor, their wages were settled before conciliation officer, therefore their agreement cannot be said camouflage. For above reasons, I record my finding that the claimants were engaged by the contractor and the contract was not camouflage. The claimant donot acquire status of regular employee of IInd party WCL.

27. Other citations relied by learned counsel for management Shri Shashi relates to reinstatement and back wages. As claimants have not established their claim, discussion of those citations is not necessary.

28. With respect to Point No. 2, the services of Ist party claimants are discontinued by the contractor despite of application filed by IInd party for impleading contractor. Said application was opposed by Union and ultimately rejected. The contractor is not party to the proceedings. Therefore legality of retrenchment of his services by contractor cannot be decided. In absence of contractor, it cannot be decided whether the retrenchment of claimants was in violation of Section 25-F or other statutory rules. For above reasons, I hold that the claimants are not entitled to reinstatement or absorption as employees of IInd party WCL. Accordingly Point No. 1, 2 are answered.

29. In the result, award is passed as under :—

1. Shri Amar Kumar Dixit and 74 others were engaged by contractors. Their services are not terminated by management of WCL., IInd party.
2. Relief prayed by the claimants is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जुलाई, 2013

का०आ० 1743.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस ई सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 155/1993) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/07/2013 को प्राप्त हुआ था।

[सं० एल-22012/112/1993-आईआर (सीएम-II)]
बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 19th July, 2013

S.O. 1743.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 155/1993) of the Cent. Govt. Indus. Tribunal-cum-Labour Court,

Jabalpur as shown in the Annexure, in the industrial dispute between the management of SECL, and their workmen, received by the Central Government on 19/07/2013.

[No. L-22012/112/1993 - IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/155/93

PRESIDING OFFICER: SHRI R.B. PATLE

The Secretary,
Bhartiya Khadan Mazdoor Sangh,
MP (BMS), Churcha Colliery
Churcha Branch,
Distt. Surguja (MP)

...Workman/Union

Versus

The Sub Area Manager,
Churcha Colliery of SECL,
PO Churcha Colliery, Distt. Surguja

...Management

AWARD

Passed on this 21st day of June, 2013

As per letter dated 17-8-93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-22012/112/93-IR(CM-II). The dispute under reference relates to:

"Whether the action of Sub Area Manager, Churcha Colliery of Baikunthpur Area of SECL in not allowing benefit of pay protection to Shri Vijaynath Singh on his promotion from LHD (T) Operator to the post of shot firer-cum-mining sirdar w.e.f. 19-10-89 is legal and justified? If not, to what relief the workman is entitled to?"

2. After receiving refernece, workman filed statement of claim at Page 3/1 to 3/3. The case of the Ist party workman is that he was promoted from the post of LHD(T) Operator to the post of Mining Sirdar from 19-10-89. On his promotion, his basic pay was fixed Rs. 1222-60-1702-66-2230 from 19-10-89. The pay in the lower grade of workman prior to his promotion was Rs. 1563.990, Since on transfer to the higher post. the benefit of pay which the workman was already availing could not be reduced from the last pay drawn. Workman submits that he was requested for fixation of pay as per pay scale to the higher promotional post. It was not considered by the management. The dispute has been referred for adjudication. Workman submits that he was drawing pay Rs. 1563 while working as LHD operator. On promotion, ACP was fixed Rs. 1200 per month is illegal.

He also claims to be entitled to different allowances for OT, Night allowance, Underground allowance, charging allowance, Sunday and PHD allowance. That he had submitted request in writing on 25-9-91 claiming difference of pay and arrears on all accounts but it was not accepted. The workman submits that his scale was wrongly fixed. In February 1991, his pay was revised to Rs. 1702 instead of Rs. 1222 from date of promotion i.e. 19-10-89. The workman prays for difference of revised pay on promotional post.

3. Management filed Written Statement at Page 5/1 to 5/4. The management submits that the dispute was raised by secretary of BKMS, Churcha Colliery. It was decided that the case was not fit for reference subsequently reference made is not legal. The Coal India carries its activities forming different companies including SECL that workman was appointed as Mazdoor Cat-I on 21-9-74. He was promoted to LHD(T) Operator in Escavation from 1-4-87. The employees working in industry to qualify the post of Mining Sirdar are given chance for selection for the vacancies available and the workman was selected through Committee. If departmental candidates are selected, it is their discretion to join or not, there is no compulsion by management to join on said post. The pay scale is fixed for particular post. Workman was selected for post of Mining Sirdar as per order dated 3-5-91. He joined said post without any objection. Therefore his pay was fixed as per the scale provided for Mining sirdar. Rest of the allegation of the workman are denied. It is submitted that the post of Mining sirdar is not permanent post, wrongly it was shown as promotion. The workman cannot take its disadvantage. The circulars dated 28-6-89 was issued. Workman is not entitled for pay protection. There are not rules for protection of pay at the time of promotion. IInd party prayed for rejection of the claim.

4. Management also filed rejoinder at Page 7/1 to 7/3 reiterating its earlier pleadings.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|--|
| <p>"(i) Whether the action of the Sub Area Manager, Churcha of SECL in not allowing benefit of pay protection to Shri Vijaynath Singh on his promotion from LHD. (T) Operator to the post of shot firer-cum-mining sirdar w.e.f. 19-10-89 is legal?</p> <p>(ii) If so, to what relief the workman is entitled to?"</p> | <p>In affirmative</p> <p>Relief prayed by workman is rejected.</p> |
|--|--|

REASONS

6. The substance of the claim of workman is that he is praying for pay protection on his promotion to the post of Mining Sirdar. The management deny said claim of the workman. Reference is filed by the Union. 1st party Union did not adduce evidence. Evidence of workman was closed on 12-6-99. The affidavit is filed by Shri Vikas Dattatreya Bhide as witness on IInd party management. The said witness has stated that workman was appointed of mazdoor Category I on 21-9-74. He was promoted as LHD(T) Operator Excavation on 1-4-87. That the employees working in industry qualify post of Mining Sirdar. The workman was selected for the post of Mining Sirdar on 3-5-91 and joined the said post. Management witness further submits that the workman concerned was selected from daily rated Mining Sirdar which is ex-cadre post and doesnot attract pay protection. The Office Order Annexure I was erroneously issued by using the word Promotion. Workman cannot take its advantage. In his cross-examination, management's witness says that any workman selected along with workman are not given pay protection. The management produced Document Exhibit M-2. Workman had submitted joining report for the post of Mining Sirdar. On 19-10-89, he received order Exhibit M-3. The workman has not produced any rules or circular. That the post of Mining Sirdar was a permanent post or he was entitled for protection of pay. The management produced circular dated 28-6-89 issued by Addnl. Personnel Manager that the employees were not entitled for pay protection. The copy of circular dated 17-2-1995 is produced which provides that in case of those piece rated employees who had applied or have been converted into time rated against selection/ voluntary option, the pay protection of their group wages of SPRA will not be taken into account. As per the said circular, it was decided that the piece rated workers shall be give protection of their existing basic wages subject to the terms and conditions. Workman was selected as Mining Sirdar in 1989. The above circular has no retrospective application and does not substantiate his claim for pay protection. Therefore the claim of Ist party workman is not substantiated. The action of the management cannot be said illegal. For above reasons, I record my finding in Point No. 1 in Affirmative.

7. In the result, the award in passed as under:—

1. The action of the Sub Area Manager, Churcha Colliery of Baikunthpur Area of SECL in not allowing benefit of pay protection to Shri Vijaynath Singh on his promotion from LHD(T) Operator to the post of shot firer-cum-mining sirdar w.e.f. 19-10-89 is legal.
2. Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जुलाई, 2013

का०आ० 1744.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स डब्ल्यू सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 55/2007) को प्रकाशित करता है, जो केन्द्रीय सरकार को 19/07/2013 को प्राप्त हुआ था।

[सं एल-22012/274/2006-आईआर (सी एम-II)
बी०एम० पटनायक, डेस्क अधिकारी

New Delhi, the 19th July, 2013

S.O. 1744.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL, and their workmen, received by the Central Government on 19/07/2013.

[No. L-22012/274/2006-IR(CM-II)]
B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/55/2007

PRESIDING OFFICER: SHRI R.B. PATLE

General Secretary,
Samyukta Koyla Mazdoor Sangh (AITUC),
Central Office, Iklehra,
Branch Kanhan Area,
Chhindwara

....Workman/Union

Versus

Chief General Manager,
WCL, Pench Area,
PO Parasia,
Chhindwara

....Management

AWARD

Passed on this 21st day of June, 2013

1. As per letter dated 5-7-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-22012/274/2006-IR (CM-II). The dispute under reference relates to:

"Whether the action of the management of WCL is dismissing Shri Dulzaan Shah from services w.e.f. 16-5-2006 is legal and justified? If not, to what relief is the workman entitled?"

2. After receiving reference, notices were issued to the parties. However Ist party workman failed to appear and submit Statement of Claim. The workman is proceeded ex parte on 13-7-2011.

3. Management filed Written Statement. It is submitted that the workman was working as Timber Mistry at Thesgora Underground Mines of WCL, Pench Area. He was habitual absentee. His attendance were poor. He was issued several warnings. The attendance of workman in 2003 was 34 days, in 2004 was 127 days and in 2005—51 days. The charge-sheet was issued to the workman for his unauthorized absence, Departmental Enquiry was conducted by Enquiry Officer. Personnel Manager S. Gadewal was representative of the management. Workman cross-examined the management's witness. The charges were proved from evidence in Enquiry Proceedings. After receiving report of Enquiry Officer, the services of workman were terminated from 16-5-06. Management submits that punishment was properly imposed for serious misconduct. The action of the management is proper and legal.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

"(i) Whether the action of the management of WCL in dismissing Shri Dulzaan Shah from services w.e.f. 16-5-2006 is legal? In Affirmative.

(ii) if so, to what relief the workman is entitled to?" Relief prayed by workman is rejected.

REASONS

Workman is challenging his dismissal from services. However he failed to appear and submit his statement of claim. No evidence is adduced by workman rather he failed to participate in reference proceedings. In Written Statement filed by management of Ist party, it is claimed that workman is dismissed after holding enquiry for unauthorized absence. Management filed affidavit of witness Shri Hirok Sarkar. He has narrated most of the facts pleaded in Written Statement by the Ist party. That for unauthorized absence, charge-sheet was issued to workman, enquiry was conducted, management's witness was cross-examined. Workman gave his statement. He has admitted that he remained absent from duty due to old age. The evidence of management's witness remained unchallenged. The workman has not cross-examined said witness. I do not find reason to disbelieve the evidence of management. For above reasons, I record my finding in Point No. 1 in Affirmative.

6. In the result, award is passed as under:—

1. The action of the management of WCL in dismissing Shri Dulzaan Shah from services w.e.f. 16-5-2006 is legal.
2. Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 22 जुलाई, 2013

का०आ० 1745.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 257/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12/07/2013 को प्राप्त हुआ था।

[सं० एल-12025/01/2013-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 22nd July, 2013

S.O. 1745.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 12/07/2013.

[No. L-12025/01/2013-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present : Smt. Vijaya Lakshmi, Presiding Officer

Dated the 25th day of June, 2013

Industrial Dispute L.C. No. 257/2004

Between :

Sri T. Saac,
S/o T. Devaiah,
R/o Pramgudipalli Village,
Chinal Irlapudu Post, Kanigiri Mandal,
Prakasam District
C/o V. Raghunath, Advocate,
13/6, P.D. Colony,
Near Community Hall,
Dilshuknagar, Hyderabad-60

.....Petitioner

AND

1. The Assistant General Manager,
Region-I, State Bank of India,
Zonal Office, Tirupathi

2. The Deputy Manager,
State Bank of India,
Zonal Office, Tirupathi

....Respondents

Appearances:

For the Petitioner : M/s. V. Raghunath, G. Venkata Reddy and U.D. Jai Bhima Rao, Advocates

For the Respondent: M/s. B.G. Ravindra Reddy and B.V. Chandra Sekhar, Advocates

AWARD

This is the petition filed invoking sec. 2A(2) of the Industrial Disputes Act, 1947 by the Petitioner who has been working as Assistant, with the State Bank of India whose services were since terminated seeking for setting aside the impugned order No. DPC/R-1/019 dated 9.10.2013 of the Disciplinary Authority as confirmed by the order dated 19.4.2004 of the Appellate Authority and to direct the respondents to reinstate the Petitioner/workman into service with back wages and all other consequential benefits from the date of his dismissal from service till retirement and also to grant relief of seniority and other grants to which he is entitled to.

2. The averments made in the petition in brief are as follows:

Petitioner joined the State Bank of India on 11.7.1985 and was promoted as Assistant in 1993. On 3.7.2001 he worked at receipts cash counter at Kanigiri branch of the said bank which falls under small office of Tirupathi A.P. At about 12.40 hours on that day, he received a phone call from Chennai that his elder son-in-law expired there. He informed of it to the Branch Manager and requested him to make alternative arrangements to relieve him from duty so that he could proceed to Chennai along with his family. Branch Manager advised him to complete the day's work and to go as he was not in a position to make alternative arrangements. So he completed the work for that day, tallied the cash and handed over the balance cash to the head cashier and left the place in hurry. While he was waiting for boarding bus, to go to Chennai along with his family at the bus stand a messenger came, in a jeep, belonging to the bank and informed him that he was summoned by the Branch Manager. Then, he advised his family to proceed of the journey and returned to the bank. The Branch Manager there informed him that there was shortage of cash of Rs. 21000/- transacted by the Petitioner on that day. Petitioner replied him that he tallied the cash book and handed over the entire balance to the Head Cashier and there was no shortage of cash transacted by him. Then, the Branch Manager asked him for counter keys so as to check it. He handed over the counter keys. Branch Manager proceeded with Head Cashier and accountant and also one Sri K. Brahmaiah, clerk-cum-cashier. At the time of

opening of counter Petitioner was kept away from that scene. There after they informed him that they found Rs. 20000/- i.e., two sections of Rs. 100/- denominations in the cash counter and demanded him for the balance of Rs. 1000/- Sri K. Brahmaiah gave Rs. 1000/- to the Branch Manager. As the Petitioner was kept away from the scene he was unable to know what happened at the counter. No panchanama was conducted and no statements were recorded on that day. A charge memo dated 5.3.2002 was served on the Petitioner on 13.3.2002. His allegations that,

1. Why the Petitioner did not hand over the counter keys on 3.7.2001 to cash office at the time of leaving the office.
2. Petitioner failed to give proper explanation for the shortage of cash which was allegedly found in the counter at 10 PM on 3.7.2001 in the presence of the Branch Manager and custodian? And
3. Petitioner made good Rs. 1000/- when questioned by the branch officials about cash shortage.

Petitioner denied the truth of all these allegations by giving his reply Dated 18.3.2002. An enquiry officer was appointed under letter dated 21.8.2002. Enquiry was conducted on 19.11.2002 and 30.12.2002. Enquiry Officer submitted his report on 4.4.2003 to the Disciplinary Authority. Copy of the same was not supplied to the Petitioner before passing final order of punishment. The Disciplinary Authority issued order dated 25.7.2003 proposing punishment of removal from service mechanically and without application of mind. Petitioner was given personal hearing on 29.9.2003. Final orders of punishment 9.10.2002 were served on him. He presented statutory appeal dated 22.11.2003 to the Appellate Authority who rejected the same mechanically by order dated 19.4.2004. The orders of the Disciplinary Authority is highly arbitrary opposite to principles of natural justice, equity and fair play. Punishment awarded is shockingly disproportionate to the alleged misconduct. The enquiry officer's report is perverse and not basing on any legal evidence. It is a cooked up case to make the Petitioner a scape goat to save the influential officers who are responsible for shortage of cash. There are conflicting statements of PWs 1 and 2 as to the persons who were present at the time of opening of the counter of the Petitioner on 3.7.2001. Statements of PW 1 to 3 were obtained by the investigating officer after three days after the incident. Statements of two award staff said to be present at that time were not at all obtained and they were not examined as witnesses during enquiry. It is fatal to the case of the respondents. Only the interested witnesses i.e., PW 1 and 2 were produced by the respondent bank. PWs 2 and 3 were joint custodians of cash charge who are responsible for accounting the cash in cash sheet, where an amount of Rs. 21000/- was found to be short by the central office on

3.7.2001 during inspection. As they are responsible for accounting for the shortage of cash in cash chart, PWs 2 and 3 can not act as credible witnesses in the matter. Branch Manager appeared to have tried to save the image of the branch and to save his co-officers by finding the Petitioner as an easy scape goat. The enquiry report given basing on the evidence of such persons is perverse and invalid. There are interpolation of figures and made conspicuously in the vault register on 3.7.2001 to cover up the lapses on the part of PWs 2 and 3. The amendment of telegram dated 4.7.2001 which shows an inflated figure of Rs. 21000/- being the amount found in the counter drawer of the Petitioner also is an attempt to cover up the lapse of PWs 2 and 3. PW2 the Head Cashier was having duplicate key of the counter. He might have placed the amount of Rs. 20000/- in the cash counter after noticing the shortage by the Central Office. The Inspecting Manager reported that the shortage of Rs. 23000/- was made good. But the correspondence speaks of shortage of Rs. 21000/- only. Bank never followed the procedure for taking acknowledgement of the counter cashier while handing over the balance. The cash said to have been found in the Petitioner's counter is not produced before the enquiry officer for verification. Petitioner served the bank for 26 years with clean record. Hence, the petition.

3. Respondents filed their counter with averments in brief as follows:

On 3.7.2001 Petitioner left the bank without accounting for the cash transactions made by him and without handing over the entire cash and the keys of the cash counter. It was noticed by the branch functionaries that there was shortage of Rs. 21000/- and therefore in the fitness of the things it was decided to search the cash counter which was under the lock and key of the Petitioner. Accordingly Petitioner was summoned and the cash counter was opened with the keys brought by him and the sum of Rs. 20000/- was found in it. Petitioner was issued with show cause notice/charge sheet dated 5.3.2002 calling upon him as to why disciplinary action should not be initiated for the irregularities/misconduct reported to have been committed by him. Petitioner denied all the allegations thereon regular domestic enquiry was ordered. The departmental enquiry was conducted in conformity with the principles of natural justice. Petitioner was given full and due opportunity to defend himself. He participated in the enquiry. The enquiry is legal and valid. The enquiry officer submitted his report dated 4.4.2003. His findings are based on record and accepted by the Disciplinary Authority. As per his findings all the charges were proved accordingly Disciplinary Authority inflicted the penalty of removal from service. Petitioner was given personal hearing by the Disciplinary Authority. He did not make out any reasonable valid points for consideration. Thus, Disciplinary Authority confirmed the punishment of removal from service as already proposed, in previous memorandum dated 25.7.2003 vide final order dated 9.10.2003. Petitioner made an appeal

to the Appellate Authority/2nd respondent after careful examination of the appeal and all relevant records of the case. Appellate Authority confirmed the punishment imposed by the Disciplinary Authority. The allegation that the witnesses examined during domestic enquiry were all interested witnesses and that the Petitioner was made scape goat by the officers are all not correct. Absolutely there is no reason, necessity or motive to make the Petitioner as scape goat. The witnesses examined are competent and direct witnesses to the incident. Their evidence is reliable. There is no necessity to present the cash found in the counter in the same form as departmental enquiry is not a criminal trial. The allegation that award staff was not produced as witnesses and no credible evidence was not on record is not correct. Enquiry is legal and findings of the enquiry officer are based on record. Punishment imposed is commensurate to the misconduct proved in the enquiry. There are no merits in this petition. There are no bonafides in the allegation of the Petitioner. They are all after thoughts invented for the purpose making over the present case. Respondent is a financial institution and any financial irregularity is detrimental to the very existence of the institution. Respondent bank imposes lots of confidence on its employees while dealing with financial matters. Petitioner has shattered the confidence because of his misconduct. Respondent bank is dealing with public money as custodian of public funds. Any kind of misconduct by its employees by misappropriation or fraud shatters the image of the banking institution and it is highly detrimental to the interest of the organization. Respondent has lost confidence in the Petitioner and he is not entitled to any of the reliefs sought for. Petition is liable to be dismissed.

4. Along with their respective pleadings both parties field their respective documents which are marked with the consent of counsels. For Petitioner, Ex. W1 to W7 documents viz., copies of charge sheet, show cause notice dated 5.3.2002, reply of Petitioner dated 18.3.2004, Enquiry Officer's report, letter proposing punishment of removal dated 25.7.2003, final order of punishment dated 9.10.2003, appeal to Appellate Authority dated 22.11.2003, order of Appellate Authority dated 19.4.2004 are filed. Whereas respondents have filed the following documents Ex. M1 to M14 viz., copies of memo dated 1.11.2001, suspension order, charge sheet, letters dated 18.3.2002 and 17.2.2003, four proceedings dated 26.4.2002, proceedings dated 25.7.2003, memorandum dated 9.10.2003 enclosing final proceedings, appeal dated 22.11.2003, Appellate Authority's order dated 19.4.2004 and enquiry proceedings. All these documents are perused.

5. During the course of the present case proceedings, petitioner's counsel filed a memo conceding the validity of domestic enquiry. Basing on the same this court held the domestic enquiry in this case as valid by virtue of order dated 19.1.2009.

6. Written arguments were also filed by either party and the same were considered. Heard the arguments of either party.

7. The points that arise for determination are:

1. Whether the impugned order No. DPC/R/-1/019 dated 9.10.2003 of the Disciplinary Authority which was confirmed by the order dated 19.4.2004 by the Appellate Authority are liable to be set aside if so on what grounds?
2. Whether the Petitioner is entitled for the reliefs sought for?

8. Point No(1):

As per the charge sheet the charges levelled against the Petitioner are as follows:

a) While handling the receipts cash counter at the branch, on 3.7.2001, Petitioner is alleged to have committed the following irregularities:-

- (i) *Petitioner did not hand over the counter keys on 3.7.2001 to Cash Officer, as was normally done by him, when he left the branch.*
- (ii) *Petitioner did not give proper explanation when he was summoned back to the branch along with the cashcounter keys at 10.00 pm on 3.7.2001 and his cash counter drawers were unlocked in the presence of the Branch Manager and joint custodians and an amount of Rs. 20,000/- (Rupees Twenty thousand only) in Rs. 100/- denomination of 2 sections was found in his cash counter.*
- (iii) *Petitioner made good an amount of Rs. 1000/-, when questioned by the branch officials about cash shortage.*

(b) It is alleged that Petitioner's above acts, as mentioned in paragraph(a), would indicate that he had deliberately not brought to the notice of the Cash Officer about the excess cash of Rs. 21,000/- received by him along with hand balance in cash balance box with an idea to embezzle the excess cash, so received. The incident of alleged misconduct has taken place on 3.7.2001 as per the material on record. As on that date, Petitioner who has been working as assistant with the Kanigiri branch of the State Bank of India attended to the work at receipts cash counter and after completing the day's work he tallied the cash and he handed over balance cash to the Head Cashier and left the bank. As far as these aspects are concerned they are not in dispute. It is also an admitted fact by both parties that there after, the Petitioner was called to the bank by sending a messenger and he was asked to hand over his counter keys to the Branch Manager and he handed over the said keys to the Branch Manager at that time.

9. No doubt, admittedly, Petitioner has not handed over his counter keys while handing over balance cash after tallying the cash to the Head cashier, as he was supposed to do and kept the counter keys with him. The first part of the charge(a) leveled against him has been that he did not hand over the counter keys on 3.7.2001 to cash office while leaving the office. As to this charge is concerned Petitioner can not deny the irregularity committed by him in not handing over the counter keys to the Head Cashier. In this regard, it is the contention of the Petitioner in his petition that nothing prevented the authorities to open his counter with duplicate keys available with the Head Cashier. For this contention, respondents have not given any reply. A careful perusal of the domestic enquiry proceedings do not reveal that at any point of time Petitioner has pointed out this aspect during domestic enquiry. Therefore, much credence need not be given to this contention raised by the Petitioner. Thus, it can safely be held that as far as the first part of charge(a), levied against the Petitioner is concerned, it is a proved irregularity on his part.

10. As far as the second part of charge(a) is concerned, it reads as follows:

“Petitioner failed to give proper explanation for the shortage of cash which was allegedly found in the counter at 10 PM on 3.7.2001 in the presence of the Branch manager and custodian.”

The fact of the incident are to be gathered from the contentions and counter contentions of either party and the enquiry proceedings placed before the court.

11. It is contention of the Petitioner that on 3.7.2001 while he was attending to his duties he received telephonic information that his elder son in law expired in Chennai and asked for relieving him from duties by making alternative arrangements, but as he could not be relieved from duty as alternative arrangements could not be made, he continued the day's work, completed it, tallied the cash and handed over the balance cash to the Head Cashier and left the Bank in hurry, to proceed to Chennai along with his family. He further contended that while he was waiting for the bus to travel to Chennai along with his family a messenger from the bank came there by a jeep, and told him that he was summoned by the Branch manager and thus, he proceeded to the bank telling the members of his family to proceed with their journey, and he would join them later. He further claimed that the Branch Manager, who was in the bank asked him for the counter keys and when he handed over the keys, the said Branch Manager together with others went to the Petitioner's counter but, keeping him away from that place and sometime later they returned to him and informed him that Rs. 20000 cash was found in his counter, but, no panchanama proceedings were conducted at that time and he does not know how and in whose presence the cash was found in his counter. Respondents have not denied the truth of these specific allegations made by the Petitioner.

12. Evidently, the Petitioner's counter was not searched in his presence, though he was very much available there. No panchanama proceedings were conducted. As rightly pointed out by the Petitioner, statements of the witnesses were not recorded at that time. Record shows that three days later statements of the workman were recorded. When serious allegation of embezzlement of money is being made conducting panchanama in the presence of the alleged workman done and prompt recording of the statement of witnesses are the fundamental proceedings/precautions to be taken up by anybody, especially the officer who are conducting the proceedings of search and seizure. Non-conducting of these proceedings certainly gives raise to prejudice to the interests of the Petitioner. Another important aspect to be noted is that joint-custodians formed part of the search and seizure party.

13. Further more, as can be seen from the evidence of Sri Ch. Chalapathi Rao, who has been working as officiating accountant of the Kanigiri branch of the State Bank of India and who deposed as PW3 during the enquiry proceedings, he was the person who maintained the vault register which contains the entries regarding withdrawals and deposits of the hard cash into the vault of the bank. On 3.7.2001 the officials of the central office of the bank have inspected Kanigiri branch and found that the vault register does not bear the withdrawal entry and handing over of cash of Rs. 21000 in the cash chest. PW2 Sri P.C. Peddanna the then cash officer of the Kanigiri branch of the State Bank of India has categorically deposed during the enquiry that he handed over the cash to Payment Cashier and handed over the hard balance box, to the Petitioner herein and that the amount of Rs. 21000 was not entered into the vault register. Thus, the evidence of PWs 2 as well as 3 clearly shows that there was no entry in the vault register which can show that the amount of Rs. 21000 was actually handed over to the Petitioner by the cash officer. The evidence of PWs 2 and 3 is therefore to the effect that PW2 is the person who handed over the hard cash box to the Petitioner and PW3 is the person who has to maintain the vault register. They both are responsible for proper maintenance of cash account. But, there is no account regarding the amount of Rs. 21000 maintained on 3/7/2001 prior to the inspection of the branch. For this, the explanation given is that PW3 has forgotten to maintain the register. That means there is no specific record to show that the Petitioner was entrusted with the missing amount of Rs. 21000 by PW2 on 3.7.2001.

14. Further, as can be seen from the evidence gathered on record during domestic enquiry, after the missing cash was recovered, withdrawal entry as well as deposit entry were made in the vault register on 3.7.2001 and at that time the amount recovered has been mentioned as "Rs. 23000", PWs 2 and 3 both have spoken so while they were under cross examination. The said entry stands

as Rs. 23000 only. Thus, as per the said entry it has been stated in the vault register an amount of Rs. 23000 was deposited. Whereas, as per the evidence on record Rs. 20000 was recovered from the counter of the Petitioner and Rs. 1000 was recovered from him. Then where from the remaining amount of Rs. 2000 has come, is a question which remained unanswered. Further all these discrepancies throw reasonable doubt on the very proceedings itself.

15. The evidence on record is further disclosing that as on 3.7.2001 the laid down procedure for handling of hard cash was not being followed in Kanigiri branch. The joint custodians of the cash have not at all followed the required procedure while handling the case, as can be seen from the evidence on record. PW1 the then branch manager, of Kanigiri branch has stated that it is not international on the part of the joint custodians, in not entering the withdrawal of the amount of Rs. 21000 during the morning of 3.7.2001 in the vault register. The material on record does not give out the reason why he could come to such an understanding.

16. The above discussed evidence clearly shows that the evidence of the joint custodians of the cash in the given branch on the day of incident, one among whom is the person who failed to make relevant entries in the vault register, formed the basis for the findings in the enquiry report. Such report has been accepted by the Disciplinary Authority totally and he proposed for awarding the punishment of removal of the petitioner from service.

17. One important aspect to be noted is that before accepting the finding of the Enquiry Officer, the Disciplinary Authority has not afforded any opportunity to the Petitioner to say his contentions/comments regarding the various findings in the enquiry by supplying a copy of the same, together with the enquiry proceedings, to the Petitioner. After receiving the enquiry report, the Disciplinary Authority straight away proceeded to propose punishment to be awarded to the Petitioner and issued show cause notice to him, asking him why such punishment shall not be awarded to him. No doubt Petitioner has been afforded a personal hearing after issuing such show cause notice. But that personal hearing was confined to the quantum of punishment to be awarded only. Thus, an opportunity to dispute with and explain regarding the various findings of the enquiry officer in the light of the evidence adduced on record during domestic enquiry, has been denied to the Petitioner by the Disciplinary Authority before considering the findings of the enquiry officer. Thus, it can reasonably be held that unilaterally the Disciplinary Authority has considered the enquiry report and accepted the same without giving any opportunity to the Petitioner. This is one other strong ground being pleaded by the Petitioner to consider the proceedings of the Disciplinary Authority as arbitrary and unjust. This ground is well founded and is acceptable.

18. In view of fore gone discussion of the material on record it can clearly be seen that finding fault with the Petitioner stating that he failed to give explanation for the shortage of cash, which was allegedly found in his counter at 10 PM on 3.7.2001 in the presence of Branch Manager and Joint custodians can not be accepted as proper and just. The very finding of such cash in the counter of the Petitioner is to be viewed with doubt, in view of the circumstances of finding of such cash and the manner in which the same was found. As already discussed above, the evidence shows that the other joint custodians of the case have become party to the search party. PW1 the Branch manager has categorically admitted that there was lapse on the part of the joint custodians in handling the cash on 2.7.2001 and 3.7.2001. Further as already observed above, the alleged search and seizure has taken place not in the presence of the Petitioner. He was kept away from the scene of search and seizure, though he was very much available in the premises. Further no panchanama has been conducted. Further more, the making good the amount of Rs. 1000 by one Brahmaiah the joint custodian on behalf of the Petitioner will not be sufficient proof of Petitioner's guilt.

19. the other charge leveled against the Petitioner has been that he made good Rs. 1000 when questioned by the bank officials about cash shortage. As to this aspect is concerned it is the claim of the Petitioner that he was in distress mood at that time and when he was asked to make good of the amount of Rs. 1000 his colleague Mr. Brahmaiah has handed over an amount of Rs. 1000 to the authorities. As can be seen from the evidence of the PW2 Brahmaiah is the person who opened the counter of the Petitioner when the amount of Rs. 20000 was said to be found in its. The evidence of PW3 indicates that Sri Brahmaiah the clerk-cum-cashier of the branch alone has given a section of Rs. 10 which amounts to Rs. 1000 for making good the missing amount when Petitioner could not bring such section of the amount.

20. Whereas it is the contention of the respondents that as there was not reluctance on the part of the Petitioner in making good the missing amount of Rs. 1000 he was found to be guilty of misappropriation of that amount. But the evidence on record shows that Brahmaiah is the person who supplied money for making good the missing money on behalf of the Petitioner to the bank. Thus, just because that amount has been made good in such manner, it can not be said what Petitioner has accepted his guilt. Thus, the findings of Enquiry Officer on all the three sections of charge (a) are not acceptable. Answer to charge (b) is nothing but consequential to the answer arrived at for charge (a) Thus, the action on the part of the Disciplinary Authority in accepting the finding of the Enquiry Officer that too, without even giving opportunity to Petitioner to comment upon the enquiry proceedings and enquiry finding, is certainly to be held as unjust arbitrary and illegal.

21. In view of the fore gone discussion of the material on record it can safely be concluded that the proceedings of the Disciplinary Authority in this case which were confirmed by the Appellate Authority are arbitrary, unjust, and are liable to be set aside.

This point is answered accordingly.

22. Point No. II : In view of the finding given in Point No.(I) above, the impugned order No. No.DPC/R-1/019 dated 9.10.2003 which was confirmed by the order dated 19.4.2004 of the Appellate Authority are liable to be set aside.

23. No doubt, the bank of the respondents being a public financial institution which handles public money as custodian of public funds must deal very strictly with the erring employees who shattered the faith of the bank in them. But, the said employees are human beings who are entitled to lead their lives with all pride and respect. Being citizens of the India they are entitled for fair and proper treatment and also the benefits of principles of natural justice. The Disciplinary Authority, while dealing with the incidents of this nature must not blindly accept the findings of the enquiry officer. He has a verify the evidence adduced on record during domestic enquiry with open mind, give full opportunity to the charged employee to explain the circumstances and then come to reasonable conclusion. In the present case, the only irregularity which appear to have been proved beyond reasonable doubt is, the failure on the part of the Petitioner in handing over the key of the cash counter to the cash officer. As to the other aspects are concerned one can clearly see that the entire bunch of the joint custodians are responsible for the lapses and irregularities in handling of the cash on the given dates. There is no proper proof as to the availability of cash in the counter of Petitioner, as there was no panchanama conducted regarding search and seizure and as the search was not conducted in the presence of the Petitioner, though he was very much available on the spot. These facts were discussed in details while deciding Point No. (I). Thus, if at all Petitioner is to be awarded with punishment, it would be for the irregularity of his handing over the keys of the cash counter to his higher up while leaving the office. This is a very minor irregularity and for that a warning to him to be careful in future is suffice.

24. Thus, the publishment awarded by the Disciplinary Authority to the Petitioner is totally unwarranted and is liable to be set aside. Thus, Petitioner is to be ordered to be reinstated into service forthwith. Considering the circumstances of the case, Petitioner is entitled for full back wages due to him from the date of his removal from service 9.10.2003 till the date of his reinstatement. Petitioner shall be entitled for all other attendant benefits also.

This point is answered accordingly.

RESULT:—

25. In the result, Petition is allowed. the impugned proceedings of the Disciplinary Authority/first respondent No. DPC/R-I/109 dated 9.10.2003 which was confirmed by the Appellate Authority/the 2nd respondent by the proceedings No. PER & HRD/9-152 dated 19.4.2004 are declared as illegal, arbitrary and are hereby set aside. The Petitioner shall be reinstated into service forth with. He is entitled for full back wages from the date of his removal from service *i.e.*, 9.10.2003 till the date of his reinstatement. He is entitled for all other attendant benefits.

Award passed accordingly, Transmit.

Typed to dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 25th day of June, 2013.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

Ex.W1:	Photosate copy of memorandum No. DPC/R-I/019 dated 9.10.2003
Ex.W2:	Photosate copy of reply of Petitioner dt. 18.3.2004
Ex.W3:	Photosate copy of enquiry report
Ex.W4:	Photosate copy of memorandum No. DPC/R-I/012 dated 25.7.2003
Ex.W5:	Photosate copy of final order of punishment dt. 9.10.2003
Ex.W6:	Photosate copy of appeal before Appellate Authority dt. 22.11.2003
Ex.W7:	Photosate copy of order of Appellate Authority dt. 19.4.2004

Documents marked for the Respondent

Ex.W1:	Office copy of memo. No. DPC/R-I/011, dt. 1.11.2001
Ex.W2:	Office copy of memo. No. DPC/R-I/012, dt. 1.11.2001
Ex.W3:	Office copy of memo. No. DPC/R-I/019, dt. 5.3.2002
Ex.W4:	Photosate copy of representation of explanation of Petitioner dt. 18.3.2002
Ex.W5:	Office copy of 1r. dt. 17.2.2003
Ex.W6:	Office copy 1r.. No. DPC/R-I/001, dt. 26.4.2002

- Ex.W7: Office copy of Ir. No. DPC/R-I/002, dt. 26.4.2002
- Ex.W8: Office copy of Ir. No. DPC/R-I/003 dated 26.4.2002
- Ex.W9: Office copy of Ir. No. DPC/R-I/004 dt. 26.4.2002
- Ex.W10: Office copy of Ir. No. DPC/R-I/013 dated 25.7.2003
- Ex.W11: Office copy of memo. No. DPC/R-I/018 dated 9.10.2003
- Ex.W12: Representation of Petitioner to Appellate Authority dt. 22.11.2003
- Ex.W13: Office copy of order No. Per & HRD/9-152 dt. 19.4.2004
- Ex.W14: Office copy of order No. Per & HRD/9-153 dated 19.4.2004

नई दिल्ली, 22 जुलाई, 2013

का०आ० 1746.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 96/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2013 को प्राप्त हुआ था।

[सं एल-41012/109/98-आईआर(बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 22nd July, 2013

S.O. 1746.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 96/99) of the Cent. Govt. Indus Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 12/07/2013

[No.L-41012/109/98-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/96/99

Presiding Officer: Shri R.B. Patle

Shri Harprasad & Smt. Ramdulari, LRs of
deceased workman Shri Raghunandan Prasad,
Village Piparia,
PO Umaria Thana,
Distt. Lalitpur

...Workman

Versus

The Divisional Railway Manager (P),
Central Railway, Habibganj,
Bhopal (MP)

....Management

AWARD

Passed on this 11th day of June 2013

1. As per letter dated 24-2-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-141012/109/98-IR(B-I). The dispute under reference relates to:

"Whether the action of the management of DRM, Central Railways, Bhopal in terminating the services of Shri Raghunandan Prasad S/o Harprasad *w.e.f.* 14-12-88 is justified? If not, to what relief the workman is entitled for?

2. After receiving reference, notices were issued to the parties. Ist party filed his statement of claim at Page 2/1 to 2/5. The case of 1st party workman is that he was appointed as Class-IV employee in November 1978 with IInd party Railway. He was working under PWI, Agra subsequently under PWI Bhopal, PWI Madura, PWI, Palwat, PWI, Agra Cantt, PWI Faridabad, PWI Lalitpur, PWI Jhansi and at PWI Vidisha. That he worked under Railway Administration for more than a decade with different authorities. He performed his duties satisfactorily. That he was on sick leave for few days in December 1988. When he reported to duty after recover from illness, he was not allowed to resume duty. He approached various authorities of the management but no result. Finally he was told that his services were terminated from 14-12-1988. He submitted that his services were terminated without holding enquiry, in violation of Section 25 of I.D. Act. On such contentions, Ist party workman prays for setting aside order of his termination and prays for reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 9/1 to 9/4, The reliefs prayed by workman are denied. It is denied that the Ist party workman was engaged in the year 1988. He denied that the workman was satisfactorily working with the IInd party. According to IInd party, the workman was engaged as casual labour on 19-7-88 to 15-12-88. Thereafter he had not reported to duty. On 12-7-89, he has returned back his Service Card No. 273309. Rest of the contentions of the Ist party are denied. It is submitted that Ist party workman had not completed 240 days service. He is not covered as workman under Section 25-B of the I.D. Act. The claim of the workman is not tenable. The reference is not tenable. IInd party prays for rejection of claim.

4. During pendency, Ist party workman died, his LRs namely Shri Harprasad and Smt. Ramdulari are brought on record.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under.

My findings are recorded against each of them for reasons are below:—

- | | |
|---|--|
| (i) Whether the action of the management of DRM, Central Railway, Bhopal in terminating the services of Shri Raghunandan Prasad, S/o Harprasad <i>w.e.f.</i> 14-12-88 is legal? | Services are not terminated as alleged |
| (ii) If so, to what relief the workman is entitled to?" | Relief prayed by workman are rejected. |

REASONS

6. Ist party workman is challenging termination from service contending that he was appointed as class-IV employee from 1978, he worked satisfactorily for 10 years. In December 1988, he was on sick leave. After he was returned to duty, he was not allowed to work. All these allegations of workman are denied by the management. Workman died during pendency of reference. LRs are brought on record. LRs failed to produce evidence, Management filed evidence of witness Shri Chandraprakash Yadav. He has stated that deceased workman has not returned to duty after 15.12.88. As such he has abandoned the service. Deceased workman engaged as casual labour during 19.7.88 to 15.12.88. The documents Exhibit M-I to M-6 are proved from evidence of said witness. As no evidence is adduced by deceased workman, claim of the workman is not supported by any evidence. Therefore I record my finding in Point No. 1 in Affirmative.

7. In the result, award is passed as under:—

- "The action management of DRM, Central Railway, Bhopal has not terminated the services of Shri Raghunandan Prasad, S/o Harprasad *w.e.f.* 14.12.88.
- Relief prayed by workman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 23 जुलाई, 2013

का०आ० 1747.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 16/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.7.2013 को प्राप्त हुआ था।

[सं० एल-41011/56/2008-आईआर(बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd July, 2013

S.O. 1747.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 16/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and their workmen, received by the Central Government on 23/07/2013.

[No. L-41011/56/2008-IR(B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

Present

Dr. Manju Nigam, Presiding Officer

I.D. No. 16/2009

Ref. No. L-41011/56/2008-IR(B-I) dated: 17.06.2009

Between

Mandal Sanghatan Mantri
Uttar Railway Karmachari Union
283/63 KH(B), Garhi Kannora, Premvati Nagar
PO-Manak Nagar
Lucknow
(Espousing cause of Shri Syeed Khan)

And

Varishth Mandal Karmik Adhikari
Uttar Railway
DRM Karyalaya
Hazratganj
I.D. No. 16/2007.
Lucknow

AWARD

1. By order No. L-41011/56/2008-IR(B-I) dated: 17.06.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sanghatan Mantri, Uttar Railway Karmachari Union 283/63 KH (B), Garhi Kannora, Premvati Nagar, PO-Manak Nagar, Lucknow and the Varishth Mandal Karmik Adhikari, Uttar Railway, DRM Karyalaya, Hazratganj, Lucknow for adjudication to the CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"KYA UTTAR RAILWAY PRABNDHAN DWARA
SHRI SAYEED KHAN, SHEDMAN-II LOCOSHED
KO RAILWAY BOARD KE BUDRIT KRAMANK

SAN. 11466/P.C-PANCHAM-IDINANK 24.11.98 KE ANUSAAR VETAN KA NIRDHARIT VETANMAN RS 4500-7000 MAIN NAKIYAJANA NAYAYOCHIT EVAM VAIDH HAI? YADIN AHI TO KAAMGAAR KIS RAAHAT KO PANE KA HAKDAAR HAI?"

3. The case of the workman's union, in brief, is that the workman, Mo. Saeed Khan was working as Shed Man-II in the pay scale of Rs. 1320-2040 and the fixation of the workman was done as per report of Fifth Pay Commission in pay scale of Rs. 4000-6000. It has been submitted by the union that the scale of Rs. 4000-6000 was revised to Rs. 4500-7000 as per Railway Board's order dated 24.11.98; but the pay of the workman has not been fixed in the pay scale of Rs. 4500-7000 till date in spite of repeated representations before the management. Accordingly, the union has prayed that the pay of the workman be fixed in the pay scale of Rs. 4500-7000 with consequential benefits.

4. The management of the railways has disputed the claim of the workman's union by filing its written statement wherein it has mentioned that the pay scale of Rs. 4500-7000 was allowed to those who were working as Shed Man in pay scale of Rs. 1350-30-1440-40-2200; but the workman is working as Shed Man-II in the pay scale of Rs. 1320-2040; and accordingly, was not entitled to fixation in pay scale of Rs. 4500-7000. Hence, the railway administration has prayed that the claim of the workman's union may be rejected being devoid of merit.

5. The workman's union has filed its rejoinder; wherein it has stated nothing new apart from reiterating the facts already stated in the statement of claim.

6. The parties have filed documentary as well as oral evidence in support of their respective claim and cross-examined each other's witness also accordingly, the case was listed for argument.

7. On the date fixed for argument, the authorized representative of workman's union submitted that it does not want to press the present claim as the workman concerned has since retired and has received all financial benefits from the management. He made an endorsement on the order sheet to the effect that "Karmaar sevanivrat ho gaya hai use sabhi hit laabh prapt ho chuke hai. Atah union yah vaad nai chalanachahati. " This move of the workman's union is not opposed by the authorized representative of the management who endorsed 'not opposed' in this context on the order sheet.

8. In view of the facts and circumstances of the case and enforcement made by the authorized representative of the union not to press the present industrial dispute and the authorized representative of the management has not opposed their move, there is no need to proceed further with the present industrial dispute.

9. Accordingly, 'no claim' award is given in the present industrial dispute. No relief is required to be given to the workman concerned as the Trade Union's does not want to pursue their case for claimed. The reference under adjudication is answered accordingly.

10. Award as above.

Lucknow
22nd March, 2013.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 19 जुलाई, 2013

का०आ० 1748.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एस ई सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 135/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.7.2013 को प्राप्त हुआ था।

[सं० एल-22012/390/2002-आईआर(सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 19th July, 2013

S.O. 1748.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 135/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of South Eastern Coalfields Limited, and their workmen, received by the Central Government on 19/07/2013.

[No. L-22012/390/2002-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/135/2003

Presiding Officer: Shri R.B. Patle

Shri Manoga Thakur
Officer on special duty,
Rastriya Colliery Workers Federation,
C/o SECL, Korba Area,
PO Korba Colliery, Distt. Korba

...Workman

Versus

Deputy Manager,
South Eastern Coalfields Limited,
Lakshman Project,
PO Kusmunda,
Distt. Korba

...Management

AWARD

Passed on this 24th day of June 2013

1. As per letter dated 6-8-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/390.2002-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management of SECL is not referring the dispute of date of birth of Shri Kanhaiyalal S/o Shri Thul Sai to the Apex Medical Board for determination of age is legal and justified? If not, to what relief he is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at page 2/1 to 2/2. Workman submits that he was working as Driver Cat-VI at Laxman Open Cast Project, Kusmunda Area of SECL. That his date of birth is 20-4-1953 but wrongly recorded as 1-1-1948 in his service book and Form B Register. That he had requested management for its correction. He had submitted documents Identify Card, school Leaving Certificate, Date of Birth Certificate issued by the Registrar in which the date of birth was recorded as 20-4-53. The grievance of workman is regarding implementation of Instruction No. 76 by Age Determination Committee for resolving the dispute of date of birth. The workman was agreeable for age determination by the said Committee.

3. IInd party filed Written Statement at Page 8/1 to 8/2. It is not disputed that workman working as Driver Cat-VI. That in Form B, the date of birth is recorded as 1-1-1948. That its correctness was accepted by workman affixing his thumb impression. Service excerpts of applicant were circulated in 1987 with privilege to correct if any wrong entry in service record. That in the Service Excerpts, the age of workman was mentioned 34 years as on 15-10-87. It was accepted by workman. As per Service Register, his date of birth is 1-1-1948. That applicant filed zerox copy of Identity Card. That his age was 30 years on 17-8-84. Next document produced is Transfer Certificate. After 43 years, it cannot be admitted as proof of date of birth of applicant. The certificate issued by Registrar also cannot be relied as it was issued on 19-4-76. Said document was available with workman at the time of date of circulation of Service Excerpts on 15-10-87. That Instruction No. 76 produced by applicant cannot claim its benefit on deciding age by Age Determination Committee. Non-applicant prayed for rejection of the application.

4. Applicant filed rejoinder at Page 9/1 to 9/8. He had denied all contentions raised by IInd party management in his written Statement. Workman has reiterated his contentions in the statement of claim. He further submits

that in medical examination report, his age was shown 46 years on 3-9-99. In Form PS-3 & PS-4, date of birth was shown as 1-1-1942.

5. Non-applicant also replied to the rejoinder at Page 5/1 to 5/2 denying all contentions of workman.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- | | |
|---|---------------------|
| (i) Whether the action of the management of SECL in not referring the dispute of date of birth of Shri Kanhaiyalal S/o Shri Thul Sai to the Apex Medical Board for determination of age is legal? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

7. The reference relates to whether the action of management of SECL not referring dispute of date of birth of workman Kanhaiyalal to Apex Medical Board for determination of age. The parties are in dispute about date of birth of workman. In Service Record, Form B, the date of birth is recorded as 1-1-48. Workman claimed his correct date of birth as 20-4-53. As per the terms of reference, the dispute about correct date of birth of workman is not referred for adjudication. The reference is only about legality of the action of the management is not sending dispute of his date of birth to Apex Medical Board for determination of age.

8. The workman filed his affidavit of evidence covering most of the facts about his appointment as piece rated labour in 1973. His date of birth is recorded in Form B as 1-1-48. That his correct date of birth is 20-4-53. He had produced School Leaving Certificate, Date of Birth Certificate issued by Registrar, Identity Card, Form "O" report of Medical Exam. In view of the terms of reference, the dispute about date of birth is not referred for adjudication. The dispute of the age cannot be decided by this Tribunal as it would be beyond the terms of reference.

9. In his cross-examination, he says that he retired on 1-1-2008. He was appointed as Labour in 1973. That Form B used to be filled bearing his signature. In 1987, he was asked about his age. He had told his date of birth was 20-4-53. That he had come to know that his date of birth was recorded as 1-1-48.

10. Management's witness Shri P.V. Satyanarayana has stated in his affidavit of evidence that in Form B, date of birth of workman was recorded as 1-1-48. The workman

was appointed on 21-5-73 at Surakachar Colliery. He claims ignorance about date of birth recorded in Form B of the workman. That service excerpts is to be filled by the workman and there is no initial. The documents produced on record Exhibit W-1, date of birth in Form PS-3 of workman was recorded as 20-4-53. It is corrected to 1-1-42. In Exhibit M-1, copy of Form B, date of birth is recorded as 1-1-42. There is scoring of writing in letters. Exhibit M-2, the service excerpts, age is recorded as 39 years. There is also scoring over 25 years. In Exhibit M-3, date of appointment is shown as 21-5-73. There is scoring in the date. Copy of Instruction No. 76 is produced on record as Annexure P-2. Said instruction provides for determination of age at time of appointment in respect of matriculates, Non-matriculates but educated, Ex-serviceman and Illiterate.

"Para-B provides Review determination of date of birth in respect of existing employees. Para-B (ii) provides wherever there is no variation in records, such cases will not be reopened unless there is a very glaring and apparent wrong entry brought to the notice of the Management. The Management after being satisfied on the merits of the case will take appropriate action for correction through Determination Committee/Medical Board.

Para-C provides Age Determination Committee/medical board for the above will be constituted by the Management. In the case of employees whose date of birth cannot be determined in accordance with the procedure mentioned in (B)(i)(a) or (B)(i)(B) above, the date of birth recorded in the records of the company, namely, form B register, CMPF Records and Identity Cards (untampered) will be treated as final. Provided that where there is a variation, in the age recorded in the records mentioned above, the matter will be referred to the Age Determination Committee/medical Board constituted by the management for determination of age."

11. The IInd party management did not refer the dispute of age of workman to Age Determination committee as provided in Clause "C" of Instruction No.76. The action of the management is violative of Instruction No.76 and therefore not legal. Accordingly I record my finding on Point No. 1 in Negative.

12. Form B Register produced by IInd party management be returned back.

13. In the result, award is passed as under:-

1. The action of the management in not referring the dispute of date of birth of workman to the Age Determination Committee is illegal.
2. Management is directed to refer dispute of date of birth of workman to Age Determination Committee as per Instruction No.76 within 15 days.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जुलाई, 2012

का.आ. 1749.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एस.ई.सी. एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 102/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/07/2013 को प्राप्त हुआ था।

[सं. एल-22012/232/2001-आईआर (सीएम-II)]

बी.एम. पटनायक, डेस्क अधिकारी

New Delhi, the 19th July, 2013

S.O. 1749.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 102/2004) of the Cent. Govt. Indus. Tribunal-cum Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Jamuna & Kotma Area of SECL, and their workmen, received by the Central Government on 19/7/2013.

[No. L-22012/232/2001-IR(CM-II)]

B.M. Patnaik, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/102/2004

Presiding Officer Shri R.B. Patle

The Area General Secretary,
M.P.K.M.S(HMS),
Branch Jamuna, Shahdol

Workman/Union

Versus

General Manager,
Jaumuna & Kotma Area of SECL,
PO Jamuna,
Shahdol

Management

AWARD

Passed on this 24th day of June, 2013

1. As per letter dated 9-9-2004 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No.L-22012/232/2001-IR(C-II). The dispute under reference relates to:

"Whether the 125 workmen engaged through M/s Teknomin construction Pvt. Limited by the management of SECL for Amadand Block "B", J&K Area for various activities in connection with open excavation, walling, roofing and drivage of incline shaft can be treated to have been engaged by the management of SECL themselves and can be termed

as regular workers of SECL and are entitled for the benefits available to the regular workers of the management of principal employer i.e. SECL? If so, from which date?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted Statement of Claim at Page 5/1 to 5/10. The case of the Union is that workers were engaged in Mining Operation resulting in production of coal, including earth cutting, overburden removal, shaft/hard stone cutting, drivage of stone drifts, roof supporting haulage operator, pump operator, driller, lineman/mistri, trammer, shuntman, explosive carrier, general mazdoor, drill mazdoor, stone cleaner, black smith/hamer man/pick sharpner, dresser, signal man, tyndal, bit sharpner etc. from March 1995 at Bartarai Inclines of amadand Block B of Jamuna Korma area of SECL. That the said work was of prohibited category for engagement of contract labour and therefore the workman be declared as employees of SECL. Management denied said claim of the Union. Government refused to make reference W.P. No. 5385/2002 was filed. As per order dated 10-7-02 by Hon'ble High Court, Ministry of Labour was directed to make reference. The workers were employed in Coal Mining Operation for above activities. That as per the provisions of Mining Act, excavation includes in Mine. It is submitted that those persons employed by IInd party were doing the mining operations. The operations relating to development of mine. The management of IIns part is liable to follow Section 48 of Mines Act, Rule 77, 78 says that the IInd party is required to maintain Form B, C, D, E register for attendance, issuing identity cards, token for vocational trainings.

3. Union also requested directions for production of documents—certificate of registration of contractors, Form B Register of the workmen, record of vocational training given by management, Attendance Register, Certified copy of payment sheet, leave sick/overtime register. The Union also refers to certificate date 1-2-85 issued by Director of Mines Safety. It is contended that the worker engaged in work of perennial nature. That Section 10 of Contract Labour Act, 1970 prohibiting employment to contract labours in certain categories. That Industry shall not employ labours through contractors or engage contractor labours for job of permanent and perennial nature as per NCWA Clause 11.5.1. That the workers completed 190 days attendance/continuous service as per Section 25-B of I.D. Act acquire status of regular employee. The contractor is bound to pay minimum statutory wages and minimum wages as per the work order. On such grounds, it is submitted that workman were entitled to become members of Employees Provident Fund and to get the benefits. The workers were engaged for prohibited nature of work. The management cannot engage contract labours. Minimum wags were not paid to 125 workers shown in the list. It is prayed that all those workers can be termed as regular workers of SECL.

4. IInd party filed Written Statement opposing the claim of Union. Preliminary objection is raised that Union has raised claim for regular employment in respect of 125 persons with the Principal employer SECL. The terms of reference shows that these claimants were engaged through contractor Teknomin Construction Pvt. Ltd. The workers of the contractors are not members of Union therefore Union has no locus-standi to file reference. That the Ministry did not consider reference fit for adjudication vide order dated 10-7-2002. Writ Petition No. 5385/2006 was filed by Union. As per order dated 4-12-2003 the directions were issued to appropriate government to refer the dispute. That the Union has not produced documents to substantiate dispute.

5. That appointments in Coal Industry is governed by certain statutory rules and regulations. Persons in Coal Industry has to undergo entire procedure prescribed for appointment. That the work of mine requires certain earth work. The management issued tender notice dated 21-12-94 for excavation and other works for amount of Rs. 97,31,543/-. The duration of work was 14 months. It is submitted that the work was allotted to Teknomin Construction Pvt. Ltd., Udaipur. It is denied that the said work is of perennial nature or falls within definition of Mining. The terms of contract provided for use of machinery equipments by contractor, to comply provisions of mine regulations and provisions of Mines Act, Minimum Wages Act and other regulations. The management of SECL is registered Principal employer. In the certificate of registration issued under Contract Labour (R&A) Act, the employees are engaged by the contractor. All the material contentions of Union are denied that those workers are entitled to status of regular employee. IInd party prays for rejection of reference.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the 125 workmen engaged through M/S Teknomin construction. Pvt. Limited by the management of SECL for Amadand Block "B", J & K Area for various activities in connection with open excavation, walling, roofing and drivage of incline shaft can be treated to have been engaged by the management of SECL themselves and can be termed as regular workers of SECL and are entitled for the benefits available to the regular workers of the management of principal employer i.e. SECL.	In Negative

(ii) If so, to what order as to relief?"

Relief prayed by workmen are rejected.

2. Relief prayed by Union is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 जुलाई, 2013

REASONS

7. As per the terms of reference, the Union has raised dispute that 125 workmen shown in the list were engaged through contractor M/s. Teknomin Construction Pvt. Ltd. by the management of SECL and were regular workers of SECL and entitled to consequential benefits from the Principal Employer. The claim of Union is denied by the management of IInd party. However the Union has not adduced any evidence to substantiate his claim. On 16-10-2012, Ist Party Union is proceeded exparte observing that workman is absence since long shows that the workman has no interest in the case. Management filed affidavit of its witness Mohantray working as Personnel Manager. Management's witness has stated that management had applied for production of documents i.e. constitution of the Union, membership register for the period 1995 to 1997, copy of audited balance sheet, order of appointment of the claimants, order of termination of claimants, particulars of period of work, date of engagement and termination, particulars of wages received and Name of Supervisor under whom the claimants alleged to have worked. Union has not produced any of those documents. That all workers were engaged by contractor. The contractor M/s. Teknomin Construction Pvt. Ltd. was allowed contract for value of Rs. 97,31,543/- duration of work was 14 months. Most of the contentions of the management in written Statement are covered in affidavit of witness. That contractor was responsible for compliance of statutory provisions, payment of wages etc. Management witness is not cross-examined. His evidence remained unchallenged. I donot find reason to disbelieve his evidence. Union has not examined any witness in support of his claim neither any workers are examined as witness to substantiate the claim. Besides affidavit of management's witness, the IInd party has produced documents Exhibit M-1 Letter of Ministry of non- consideration of dispute for adjudication, M-2 Tender of work, M-3 copies of agreement, M-4 is work order and M-5 is copy of licence under. C.L. (R&A) Act.

8. The evidence on record produced by management and Union has not produced any evidence that claim of Union that 125 contract labours should be treated as regular employees of IInd party cannot be accepted. Therefore I record my finding in Point No. 1 in Negative.

9. In the result, award is passed as under:-

1. The claim of Union that 125 workmen engaged through M/s. Teknomin construction Pvt. Limited by the management of SECL for Amadand Block "B", J & K Area for various activities in connection with open excavation, walling, roofing and drirage of incline shaft cannot be treated as regular employees of the IInd party SECL.

कांआ 1750.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एम० सी० एल० के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय भुवनेश्वर के पंचाट (संदर्भ संख्या 24/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19/07/2013 को प्राप्त हुआ था।

[सं० एल०-22012/246/2004-आईआर(सीएम-II)]

बी० एम० पटनायक, डेस्क अधिकारी

New Delhi, the 19th July, 2013

S.O. 1750.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Bhubaneswar as shown in the Annexure in the Industrial dispute between the management of Mahanadi Coalfields Limited, and their workmen, received by the Central Government on 19/07/2013.

[No. L-22012/246/2004-IR(CM-II)]

B. M. PATNAIK, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT BHUBANESWAR

Present: Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 24/2005

Date of Passing Order-6th May, 2013

Between:

1. The Chief General Manager,
Mahanadi Coalfields Limited,
Talcher Area, PO. Dera Colliery,
Dist. Angul.
2. The General Manager (Administration)
MCL, Burlal.

.....1st Party-Managements.

(And)

Shri Mahenswar Naik,
Qr. No. G.M. (T) B/22, Po. Dera Colliery,
Dist. Angul.

.....2nd Party-Workman.

Appearances:

None	...	For the 1st Party- Management No. 1.
Shri Raghmani Das Sr. Legal Inspector.	...	For the 1st Party- Management No. 2.
Shri Maheswar Naik.	...	For himself the 2nd Party-Workman

ORDER

Case taken up today. Authorized representative for the 1st Party-Management No. 2 and the 2nd Party-workman in person are present. None is present for the 1st Party-Management No. 1.

2. It has been stated on behalf of the parties that a memo along with settlement in Form-H has been filed on the last date. The 2nd Party-workman agrees to the terms and condition set-out in the settlement and has signed the memo of settlement in Form-H.

3. In view of the settlement filed by the parties the reference is decided as per the terms and conditions of the settlement which shall be binding on the parties and shall part of the order.

4. The dispute between the parties is decided accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 26 जुलाई, 2013

का.आ. 1751.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स एयर इण्डिया लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1 मुम्बई के पंचाट (संदर्भ संख्या 1/23 का 2001) को प्रकाशित करती है, जो केन्द्रीय सरकार का 29/04/2013 को प्राप्त हुआ था।

[सं० एल० 11012/6/2001-आई०आर०(सीएम-1)]

एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 26th July, 2013

S.O. 1751.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT-1/23 of 2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure in the Industrial dispute between the management of M/s. Air India Ltd. and their workmen, received by the Central Government on 29/04/2013.

[No. L-11012/6/2001-IR(CM-I)]

B. M. PATNAIK, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.1 MUMBAI**

Present: JUSTICE G.S. SARRAF, Presiding Officer

REFERENCE NO. CGIT-1/23 of 2001

Parties: Employers in relation to the management of
Air India Ltd.

And

Their workmen

Appearances:

For the first party no. 1. : Ms. Geeta Raju, Adv.

For the first party no. 2. : Mr. Nabar, Adv.

For the Union : Mr. M.B. Anchan, Adv.

State : Maharashtra

Mumbai, dated the 19th day of March, 2013

AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of the reference given in the schedule are as follows:

“क्या मुम्बई मजदूर संघ की एअर इंडिया लिमिटेड मुम्बई के प्रबंधन से मांग कि उक्त प्रबंधन में श्री सीताराम बी घाडगे ट्रांसपोर्ट एंड लेबर कोन्ट्रैक्टर के माध्यम से नियोजित श्री अनिल विठ्ठल ढेरे एवं सूची में दिए गए अन्य 42 कर्मकारों का एअर इंडिया का नियमित कर्मकार माना जाये तथा उन्हें उनके पदों पर पूर्ण वेतन सहित उनके हटाये जाने की तारीख से पुनः स्थापित किया जाये, उचित एवं न्यायसंगत है? यदि हां, तो उक्त कर्म-कार किस राहत के पात्र हैं?”

2. According to the statement of claim filed by Mumbai Mazdoor Sangh (hereinafter referred to as the Sangh) M/s. Sitaram B. Ghadge (hereinafter referred to as the First Party no. 2) is the contractor and Air India (hereinafter referred to as the First Party No.1) is the principal employer of the concerned workmen. Though the nature of work of loading, unloading and other incidental work done by the workmen is of perennial nature the contractor and the principal employer are committing unfair labour practice by not employing the workmen on a regular basis. The services of the workmen have been terminated by the First Party No. 1 and the First Party No. 2 without following due process of law. Since the workmen have been performing perennial nature of work they are entitled to reinstatement with full back wages and continuity of service.

3. The First Party No. 1 has filed written statement wherein it has stated that the workmen are Mathadi Workers engaged by M/s. S.B. Ghadge and they are covered under Maharashtra Mathadi Hamal and Other Manual Workers (Regulations of Employment and Welfare) Act, 1969 and the said Act does not cover the First Party No. 1. According to the written statement the First Party No. 1 issued tenders for supply of Trucks/Mathadi workers to deliver drums and for shifting heavy office furniture on need basis. M/s. S.B. Ghadge was then given the said contract. The contract entered into with the First Party No. 2 did not amount to regular contract and it was based on need that might arise once or twice in a week. The payment was made to the First Party No. 2 as per the terms and conditions of the contract and the First Party No. 1 had no direct control over the workmen. The workmen were required mainly for shifting heavy furniture and for loading/unloading work for which the First Party No. 2 used its own transport and once the work was over which lasted only for a maximum period of one hour the workmen did not remain in the premises of the First Party No. 1 the First Party No. 1 never engaged the workmen. The First Party No. 1 has, therefore, prayed that the reference be rejected.

4. The Sangh has filed rejoinder wherein it has reiterated its stand.

5. According to the written statement filed by the First Party No. 2 no workman has completed 240 actual working days during the period of contract. The First Party No. 2 was engaged by the First Party No. 1 for a period of one year only and the nature of work was such that the First Party No. 2 was not required to engage workers on permanent basis. The Second Party No. 2 was required to supply the labour for loading and unloading or such other allied activities everyday but the volume of work never remained the same and the supply of workmen depended on the requirement of the First Party No. 1. The persons employed by the Second Party No. 2 did not remain the same because during the contract period on some days the First Party No. 2 was not required to supply any labour. On expiry of the contract the First Party No. 2 had no alternative but to terminate the services of the workmen. The First Party No. 2 has, therefore, prayed that the reference be rejected.

6. The Sangh has filed affidavit of Sampatrao Daji Kolekar who has been cross examined by learned counsels for the First Party No. 1 and the First Party No. 2. The First Party No. 1 has filed affidavit of Atul Gangurde who has been cross examined by learned counsels for the Sangh and for the Party No. 2. The First Party No. 2 has filed affidavit of S.B. Ghadge who has been cross examined by learned counsels for the Sangh and for the First Party No. 1

7. Heard Mr. Anchan on behalf of the Sangh, Ms. Geeta Raju on behalf of the First Party No. 1 and Mr. Nabar on behalf of the First Part No. 2.

8. The sole witness of the Sangh Sampatrao Daji Kolekar has stated in his cross examination:

"It is correct to say that I was appointed by Mr. S.B. Ghadge and not by Air India.....We were paid the wages by Ghadge.....It is correct to say that we were terminated by Ghadge, Contractor.

It is clear from the above statement that the workmen were appointed by the First Party No.2 and their services were terminated by the First Party No.2 and wages to them were also paid by the First Party No. 2. There is thus no doubt that the workmen were not the employees of the First Party No.1. As such the workmen have absolutely no right whatsoever to be regularised or to be reinstated in the services by the First Party No.1.

9. The question that whether the workmen are entitled to be reinstated by the First Party No.2 is entirely beyond the scope of this reference because the Central Government has not sought an answer to that question as is clear from the perusal of the schedule.

10. Moreover, there is no evidence on the record to prove that the workmen worked for more than 240 days in a year. The witness of the Sangh, Sampatrao Daji Kolekar has admitted in his cross examination that Ex.C-5 and Ex.C-6 are muster roll-cum-wage register and these two exhibits do not establish that the workmen worked for 240 days in one year.

11. It is thus clear from the above discussion that the workmen have no right to be reinstated.

12. The workmen are, therefore, not entitled to any relief.

Award is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 19 जुलाई, 2013

का.आ. 1752.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैनेजमेंट, नार्थ ईस्टर्न स्पेस ऐप्लीकेशन सेंटर, शिलांग के प्रबंधन के संबंध में निर्विवाद और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण गोहाटी के पंचाट (संदर्भ संख्या 08/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/06/2013 को प्राप्त हुआ था।

[सं. एल-42012/41/2008-आईआर(डीयू)]

सोम नाथ, अनुभाग अधिकारी

New Delhi, the 19th July, 2013

S.O. 1752.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 08/2008)

of the Central Government Industrial Tribunal-cum-Labour Court Guwahati as shown in the Annexure in the Industrial dispute between the employers in relation to the Management, North Eastern Space Application Centre, Shillong and their workman, which was received by the Central Government on 28.06.2013.

[No. L-42012/41/2008-IR(DU)]
SOM NATH, Section Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, GUWAHATI ASSAM

Present: Sri L.C. Dey, M.A., LL.B.,
Presiding Officer,

CGIT-cum-Labour Court, Guwahati.

In the matter of an Industrial Dispute between:

The Management North Eastern Space
Application Centre, Barapani, Shillong,
Meghalaya.

-Vrs-

Their Workman, Sri Arbinson Thangkhiew,
Shillong.

Ref. Case No. 08 of 2008

APPEARANCES

For the Management : Mrs. R. Borah, CGC

For the Workman : Sri N.C. Kalita, Advocate.

Date of Award: 28.02.2013.

AWARD

1. The present Reference Case is arising out of Order No. L-42012/41/2008-IR(DU); Dated: 18/07/2008, issued by Government of India, Ministry of Labour & Employment, to adjudicate the issue as described in the Schedule below.

SCHEDULE

"Whether the action of the management of Director, North Eastern Space Application Centre in terminating the services of their workman Shri Arbinson Thangkhiew, w.e.f 01/03/2007 is legal and justified? If not, to what relief the workman is entitled to?"

2. After registration of this Reference Case, notice was served upon the parties who appeared and presented their claim statement/written statement. Both the parties adduced their evidence in support of their respective pleadings. I have also heard argument at length from both the sides.

3. The brief fact of this Reference case is that the workman namely Arbinson Thangkhiew was verbally appointed as Casual employee in the capacity of Cleaner-cum-Sweeper in the Office of the North Eastern Space Application Centre, Umiam, Barapani, Ri Bhoi District,

Meghalaya (hereinafter called NESAC) with effect from 31st May, 2001 on daily wage @ Rs. 50/- per day. Accordingly the workman had been performing his duty as Cleaner-cum-Sweeper with effect from 31.5.2001 sincerely, faithfully and honestly as well as to the satisfaction of all concerned. Unfortunately, on 01.03.2007 the workman was verbally sacked by the Director of NESAC, Barapani without following the due process of law. It is alleged by the workman that he was thrown away out of job by the Director of NESAC, Barapani, Meghalaya most arbitrarily without following the due process of law and even without giving him any opportunity for hearing which is violative of Article 14, 16, 21, 309 and 311 of the Constitution of India, and it is a clear violation of natural justice. Thereafter the conciliation proceeding took place but no settlement could be arrived at. Accordingly the Government of India referred this dispute to this Tribunal for adjudication.

4. The Management namely North Eastern Space Application Centre (in short NESAC), contested the proceeding by filing written statement denying the claim of the workman. The Management in their W.S. has contended inter-alia that the workman was temporarily engaged as a Cleaner-cum-Sweeper in their Guest House on daily wage basis. It is mentioned that the NESAC being an Autonomous Body under the Administrative Control of Space and is therefore required to follow the various Rules and Orders issued from time to time by the Government of India and in case of appointment on daily wage basis casual labourer, the NESAC to adopt due Selection Process obtaining the names of the intending candidates from the local Employment Exchange; and as such, no selection process was adopted since the workman was temporarily casual worker. It is further alleged that the Management, in such a situation could not confer temporary status to the workman and hence, the question of regularization in his service does not arise. It is admitted by the Management that no attendance Register was maintained for the part-time casual workers and the payment was being made to them on the basis of the report submitted by the Care-taker. Further case of the Management is that the zerox copies of so-called attendance register annexed by the workman are not genuine since the NESAC did not maintain any register for part-time workers. According to the Management as per the ban imposed by the Government of India on the recruitment to the post of Dr.D in all Central Government Offices the permanent appointment to the concerned workman could not be done and the engagement of the workman was discontinued with effect from 1.3.2007 and the cleaning work in the Guest House was entrusted to a Contractor/Out sourcing Agency. The Management denying of the statements made in para-4 to 12 of the claim statement submitted by the workman prayed for dismissing the Reference Case.

5. The workman examined 3 witnesses including himself while the Management examined their Administrative Officer, NESAC, Shillong.

6. Decision and reasons therefor :

In course of argument learned Advocate for the workman submitted that the workman was engaged by the NESAC as Cleaner-cum-Sweeper at Barapani, Meghalaya with effect from 31.5.2001 as Casual Labourer on daily wage basis @ Rs. 50/- per day and he worked till 01.03.2007 without any break. He contended that he was terminated by the Management (NESAC) illegally and hence; the termination order of the Management is liable to be set aside and to allow him to continue his job along with the back wages.

The learned Advocate for the Management, on the other hand, emphatically argued that the workman, admittedly, is a part time casual Cleaner-cum-Sweeper at a daily wage basis @ Rs. 50/- and he was engaged verbally by the Management without following any selection procedure as per the procedure adopted by the local Employment Exchange. So the question of regularization does not arise and the case of the workman appears to be devoid of merit. As such, plea of the workman is liable to be rejected.

7. From the evidence on record it appears that the workman Sri Arbinson Thangkhiew (W.W.1) was engaged as Cleaner-cum-Sweeper under NESAC as casual worker on daily wage @ Rs. 50/- with effect from 31.5.2001 to 1.3.2007. The workman was dis-engaged by the Management verbally. In spite of his request for re-engagement the Management refused to do so. The cross-examination of the workman witness No.1 shows that no formal letter was issued to him and he was appointed and removed from service verbally. The workman also admitted that his appointment was made without any recommendation by the Employment Exchange; and that he used to remain absent from duty. The workman has submitted the copies of Attendance Register. Annexure-1 (proved under objection) which is a letter dated 18.2.2003 issued by the O.S.D., NESAC directing the casual labourer/ Safaiwala/Peon for attending office in time with caution for taking serious view against the unpunctual works. He also submitted the Attendance Register in respect of the workers of NESAC, Annexure-13, (proved under objection). The workman witness No.2 Edison Thangsang, who is one of the co-worker of the workman, in his evidence stated that the workman Arbinson Thangkhiew joined the service on 31.3.2001 and no appointment letter was issued. He also stated that the workman used to get his remuneration @ Rs.50/- as daily wage and was terminated on 01.03.2007 without issuing any show cause notice upon the workman. As such, the workman was illegally terminated by the Management. He also mentioned that the O.S.D. used to pay the wage @ Rs. 50/- per day and after retirement of the

O.S.D. the Care Taker of the Guest House would pay them the same amount and they could receive the amount mentioned in a Register maintained by the Management. It is also admitted by the workman witness No. 2 that neither any advertisement was made in the Newspaper before their engagement nor their names were sponsored by the Local Employment Exchange. The workman witness No.3, Sri D.O. Ranjha, the then Joint Secretary to the Government of Meghalaya who was appointed in the NESAC on contractual basis as O.S.D. after his retirement; in his evidence, mentioned that in the year 2000 he used to look after both the Guest House and Office while he was In-Charge of the Guest House. He engaged the workman verbally as Cleaner-cum-Sweeper in the Guest House on daily wage basis @ Rs. 50/- and Sunday and Holidays were also included. He categorically mentioned that no appointment letter was issued to the workman and in the year 2003 he left the NESAC and thereafter what happened he did not know. In his cross-examination the workman witness No.3 also admitted the fact that no advertisement was made in the local Newspapers nor their names were sponsored by the local Employment Exchange before engagement of the workman and they used to pay the amount to the workman and acknowledging thereof they received the amount and the Register was maintained by the Management.

The solitary witness on behalf of the Management has stated that he joined as Administrative Officer in NESAC, Shillong on 3.7.2009 for which he did not know the workman Arbinson Thangkhiew, however, he knew the fact of the case. He mentioned that the workman was a part time Cleaner/Sweeper in their Guest House on daily wage basis and was purely temporary worker. Neither any engagement letter was issued to the workman nor selection process was initiated. He categorically mentioned that no Attendance Register was maintained by them in respect of part time/Casual worker; and he did not know when the workman was engaged but the workman was terminated on 01.01.2007 verbally. He also mentioned that from 01.01.2007 as per direction of the Government of India the cleaning work was entrusted to Contractor for engagement of persons from outsourcing agency and the workman was asked to work under the contractor but he refused to do so and stopped coming to office. Thus the workman is not legally entitled to regularisation of his service. During his cross-examination the Management witness No.1 said that since they had no sanctioned post, so question of selection process of Group-D does not arise and no Attendance Register was maintained in respect of part time casual worker. He also added that Annexure-13 was not issued from their office and the signature of the casual worker was obtained as a signature of the casual worker was obtained as a proof of acknowledgement in the voucher which is an official document. He further said that no acquaintance register was maintained in respect of casual worker. He

denied the suggestion tendered by the defence that some Casual employees of Group-D were made permanent earlier. He also added that since the workman was a daily part time wage worker the question of maintaining procedure of termination does not arise. The Management witness again stated that the workman was informed verbally to work under the Contractor since the Group-D staff were engaged from Out Sourcing Agency as per Government policy.

8. On careful consideration of the evidence of both the sides along with the pleadings and having regard to the submission of learned counsel for both the parties it is found established that the workman was engaged by the Management (NESAC) purely on casual basis @Rs. 50/- per day and no formal advertisement was made nor the names of the workman was sponsored by any local Employment Exchange before his engagement. It is also found admitted that the workman used to remain absent from his duty. Although the workman has produced some zerox copies of documents such as, Attendance Register (Annexure-13), some representations, some letters purported to be issued by the Management and some other concerns, those documents were not proved in the court as per provision of law and as such, the same are not admitted. The evidence of the Management witness No.1 clearly shows that the service of the workman was discontinued as per verbal order on 1.7.2007 due to the implementation of new policy of the Government restraining recruitment to the Group-D Post. Thus is revealed that the workman is purely a casual worker on daily wage basis and it is admitted fact that the workman used to remain absent from his duty. The Annexure-I produced by the workman shows that the order was issued by the O.S.D. on 18.2.2003 prescribing the office hour with caution for maintaining punctuality but the said letter does not bear any official seal. The Annexure-13 the copies of the so-called Attendance Register produced by the workman is also found not proved as per provisions of Evidence Act as such, the Annexure-1 and Annexure-13 do not confer any right to the workman for claiming regularization. Further the workman was engaged by the management verbally without following the Recruitment Rule since in case of appointment to the post of casual worker the name of the candidates should be sponsored by local Employment Exchange and the advertisement also should be published. In the instant case the Management did not follow the above statutory provisions for recruitment and no appointment shall be made violating the Recruitment Rules.

9. Mr. N.C. Kalita, learned Advocate for the workman in course of his argument took the plea that the workman was appointed as casual worker by the Management on daily wage @ Rs. 50/- which was at par with the wage rate of Rs.50/- as fixed by the Government of Meghalaya; and subsequently the Government of Meghalaya enhanced the wage rate to Rs. 70/- per day; and in such circumstances the workman pressed the Management for enhancement

of their daily wage, while the Management dis-engaged the workman as such, the action of the Management is arbitrary and illegal which requires to be interfered. From the evidence on record and the documents submitted by the workman I find nothing to show that due to the approach by the workman for enhancement of wage the Management dis-engaged him. Further, none of the workman witness including himself uttered a single word as to the cause of dis-engagement due to the approach of the workman for enhancement of daily wage from Rs. 50/- to Rs.70/- per day. As such, I find no reason to entertain the submission of learned Advocate for the workman. Mrs. R.Bora, learned Advocate for the Management during her submission pointed out that in case of engagement of the workman the question of regularization does not arise since the workman was engaged purely on casual as well as part time basis. She also argued that due to ban imposed by the Government of India in respect of appointment to the Group-D post Management does not have any legal right to appoint any person in Group-D post permanently and consequent upon dis-engagement of the workman the works of Cleaner-cum-Sweeper was entrusted to the Contractor; and at that time the workman, in spite of asking him to join his work under Contractor refused to do so. As such, the workman has no right to claim for re-engagement as well as regularisation. In support of her contention Mrs. R. Bora, learned Advocate relied upon a decision of the Apex Court in State of Karnataka-vrs-Umadevi reported in (2009) 4 SCC 1 wherein it has been emphasized that casual workers or other categories of fortuitous employees service rendered on a fixed pay or on daily wage though may have continued for long, will by itself not vest in an incumbent a right for regularization. Learned Advocate for the Management also relied on Writ Petition (C) 1595/2007, Amarjit Kaur-vs-The Union of India & Ors, wherein it has been observed by the Hon'ble Gauhati High Court that in case of temporary daily wage earner, his regularization of service can not be recognized legally.

10. In this context let me refer the following decision of the Apex Court:- Reported in (2009) 4 SCC, State of Karnataka and Ors. - vs-G.V. Chandrashekhara, wherein the Apex Court has reiterated that ad hoc appointment even if it continues for a long time can not be ordered to be regularized.

In Umesh Kumar Nagpal-vs-State of Haryana, published in (1994) 4 SCC 138, wherein it has been observed "equality Clause as enshrined in Article 16 mandates that every appointment to the public post or office should be made by open advertisement so as to enable all eligible persons to compete for selection on merit."

11. From my above discussion and having considered the evidence as discussed above as well as taking into

consideration the ratio as laid down by the Hon'ble Apex Court and Hon'ble Gauhati High Court I am constrained to hold that the case of the workman fails and as such, no relf can be granted to the workman. Accordingly the Reference is answerred in negative.

ORDER

The Reference stands disposed of without any cost.

Send the Award to the Ministry as per provision of law.

Given under my hand and seal of this Court on this 28th day of February, 2013 at Guawahati.

L. C. DEY, Presiding Officer,

नई दिल्ली, 19 जुलाई, 2013

का०आ० 1753.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डायरेक्टर एंड डीन, गीरीनगर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पुणे के पंचाट (संदर्भ संख्या (आई.टी.) न० 57/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.06.2013 को प्राप्त हुआ था।

[सं० एल-14011/13/1997-आईआर(डीयू)]

सोम नाथ, अनुभाग अधिकारी

New Delhi, the 19th July, 2013

S.O. 1753.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [Ref. (IT) No. 57/2004)] of Industrial Tribunal, Pune as shown in the Annexure, in the Industrial dispute between The Director & Dean, Girinagar and their workman, which was received by the Central Government on 28.06.2013.

[No.L-14011/13/1997-IR(DU)]

SOM NATH, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, SECOND INDUSTRIAL TRIBUNAL AT PUNE

Reference (IT) No.57/2004

Between :

The Director & Dean,
Indian Armament Technology,
Girinagar,
Pune - 411 025.

.. First party.

And

The Secretary
Pune Zilla Mazdoor Sangh,
185, Shaniwar Peth,
Pune - 411 030.

.. Second party.

CORAM : Shri M.G.Choudhary, I/c Presiding Officer.

ADVOCATES : Smt. Sandhya Londhe-Deshpande,
Advocate for first party

Shri A.Y.Shikarkhane,
Advocate for second party

A W A R D

(Date : 01-04-2013)

Government of India through Ministry of Labour in exercise of powers conferred by Clause (d) of sub-section (1) of Section 10 of Industrial Disputes Act, 1947 referred the industrial dispute between abovenamed parties by reference order dt.2-9-2004. The industrial dispute/the demand of the second party mentioned in the Schedule to the Reference Order which reads as under :

“Whether the action of the management of Institute of Armament Technology, Girinagar, Pune in not regularizing the services of 18 workmen (List enclosed) of the officer's mess is legal, proper and justified ? If not, to what relief the said workmen are entitled to and from which date and what other directions are necessary in the matter ?”

2. In response to the notice issued by this Tribunal, the second party union appeared in the matter and filed Statement of Claim at Exh.U-6 and contended that the first party designs, manufactures and stores various types of engineering products in the workshops and other facilities located in its premises. It is producing various goods with the help of power and employs more than 50 employees and is a factory under the Factories Act, 1948. It is also an industry under the Industrial Disputes Act. According to second party, the appropriate Government in respect of the first party is the Central Government and the provisions of the Payment of Gratuity Act, Minimum Wages Act, Employees Provident Fund Act and the Scheme and the Industrial Employment (Standing Orders) Act are also applicable to it. According to second party, apart from the manufacture as above the first party is also a research institute. It also trains civilian and defence officers in various techniques and runs regular courses. According to second party, the first party is controlled by the Defence Research and Development Organisation of the Central Government. The first party runs an Officers Mess in its premises which has also lodging facility. This mess is run as a statutory facility as per Section 46 of the Factories

Act, 1948. According to second party, the first party employs the permanent workmen in the said Officers Mess whose names are mentioned in the Statement of Claim. According to second party, in addition to permanent workmen and as there is sufficient work year round the first party is employing about 40 workmen since more than 15 years in the capacity of Room Attendants, Waiters, Washers, Cook and Helpers. These workmen cannot enter the premises of the first party unless they are issued entry pass and the first party has been issuing them with entry pass every month for all these years. According to second party, this proves that the first party requires their services continuously and on regular basis. It is also contention of the second party that some of these workmen are provided with rent free quarters on the premises by the first party. The first party provides water and electricity to these quarters and deducts Rs.90 p.m. from the wages of these workmen towards the charges for the same. According to second party, the workmen are doing the same work as done by the permanent workmen but they are exploited like bonded labour by the first party. They are forced to work for long hours, abused and on top of it are paid wages of Rs. 500 to Rs. 600 p.m. According to second party, the first party does not pay them minimum wages fixed by the Central Government for unskilled labour nor pay them wages at the rate of 1/3rd of the wages paid to permanent workmen as per the directive of the Central Government. According to second party, the first party is flouting every Labour Laws even after the breach were pointed out by the Assistant Commissioner of Labour (Central). According to second party, the 18 workmen named in the Reference order have been working with the first party in the Officers Mess in various capacities such as Cook, Waiter, Room Attendant etc. for more than 15 years or so and are provided with quarters on the premises. They are in continuous service and are sometimes given artificial breaks. That work is available round the year yet they are exploited by the first party as beggars as stated above. According to second party they are not made permanent and given benefits of permanency like the employees mentioned in Para.3. According to second party the first party has engaged in unfair labour practice under item I(10) of Fifth Schedule of the Industrial Disputes Act, 1947, by employing them as casual for years together with a view to deprive them of the benefits of permanency. On these background, lastly requested to allow the present reference.

3. The first party in the written statement at Exh.C-10 contended that the contents of statement of claim are illegal, false and wrong hence it is totally denied by the first party. According to first party, the second party has no locus-standi to file this reference since there is no employer-employee relationship existing between the first party and the second party. According to first party there was/is no service contract implied or in writing between first party and second party. At no point of time, the second

party had been appointed for any of the sovereign functions/activities carried out by the first party. Thus according to first party, the present dispute is not an industrial dispute as per settled legal position and this Court has no jurisdiction to try and entertain the present dispute. According to first party, the second party has not given any prior notice to this institute or any of its officer u/s 80 of CPC while making to Govt. Officers/Govt. Institute as a party in the case. According to first party the workmen under the reference are not the workmen of the first party. It is denied that first party is the factory and industry as alleged. According to first party Institute of Armament Technology is training establishment of Defence Research & Development Organization under the Ministry of Defence, Government of India. It imparts training/education on defence technology related to the subject of officers of the Armed Forces the civilian officers of Ministry of Defence and also to the foreign students of friendly nation. The first party is manufacturing and storing various types of engineering products in workshop is not correct. According to first party, through the designing of engineering tools/equipments for purely academic and research purpose is carried out on need basis under Mechanical Engineering Section under the supervision of specialists/Research Officers. The Institute is not engaged in producing any goods as per the decision of the Ministry of Labour, Govt. of India that since the Institute of Armament Technology is carrying out sovereign function to cater the training needs of the Armed Forces of India, the provisions of I. D. Act are not applicable to the Institute. It is denied that provisions of Payment of Gratuity Act, Minimum Wages Act, Employees Provident Fund Act and Scheme and Industrial Employment (Standing Orders) Act are applicable to first party. According to first party, it being the first party Central Government Establishment, it is administrated, run supervised and controlled by Defence Ministry of Central Government Funds and the same are provided by Central Government and its audit is done by Central Government and terms and service conditions of first party are governed by Central Civil Services Rules. According to first party, the Officers Mess is purely a hostel facility run primarily on the contribution of its members and managed by a Managing Committee appointed by the General body of the Officers' Mess members. There is no provision to run the Mess as a statutory/non statutory/ department canteen. The persons are employed in officer's mess purely on casual basis by the Officers Mess as private arrangement. These ad-hoc workers were/are not paid out of any contingency grant for which there is no provision under the existing Govt. rules/orders. According to first party, the second party is well aware of working under the supervision and control of management committee of the Officers Mess had not made the said committee a necessary party to present reference with malafide intention of suppressing material facts. According to first party, it has not employed any workmen as mentioned in the reference

order and they are employed by the Officers Mess which is purely a hostel facility run on the subscription from the members of the said Mess and managed by the Management Committee appointed by the members of the Officers Mess and the first party has nothing to do with the affairs of the said Mess and is not concerned with the Mess. According to first party, they were provided accommodation in Mess servant quarters by the Management Committee of the Officer's Mess and not by the first party and this is an issue between Officer's Mess and its workmen and first party does not have any concern with the workmen to do about it. It is denied that first party has engaged in unfair labour practice as alleged. It is denied that the workmen are entitled for permanency as claimed. It is denied that they are entitled to get the benefits of permanency as claimed. It is denied that they are working since 15 years as alleged and also requested to dismiss the reference.

4. Following recast issues are framed by my learned predecessor at Exh.O-7 which arise for my determination :

- (1) Whether the reference as framed is tenable under law ?
- (2) Whether the court has jurisdiction to try and entertain present reference?
- (3) Whether the first party establishment is an industry within the meaning of I. D. Act ?
- (4) Does the second party employees prove that 18 employees involved in the matter were in continuous service of the first party ?
- (5) Whether the second party is entitled for regularization of 18 employees involved in the matter?
- (6) If yes to what extent ?
- (7) In what manner the reference is answered ?

5. My findings to above points, for the reasons recorded below, are as under —

- (1) No
- (2) Yes
- (3) Yes
- (4) No
- (5) No
- (6) No

(7) Reference is answered in negative as per order below.

REASONS

6. Both the parties have produced documents on the record. Documents produced by the second party with list Exh.C-6 are the xerox copies of various certificates

and identity card issued by Officers Mess of the first party to the workmen involved in the present reference whose names are mentioned in the reference order. The second party workmen who deposed before the Court have stated about this certificate issued by Officers Mess in their examination-in-chief as such most of these certificates are exhibited. The second party also produced documents with list Exh.U-33 which are printouts of pages from the website of first party. The first party has produced documents with list Exh.C-15 and Advocate for second party endorsed on the list Exh.C-15 that all documents may be exhibited and accordingly these documents are exhibited namely license under Factory Act of the first party, the service book of the workmen mentioned in para.3 of the statement of claim, Cash Book and General Ledger of first party, Rules for allotment of residential accommodation in first party, letter dt.31-12-87 from Sr. Adm. Officer-I to Mess Secretary, letter dt.1-1-1988 from Mess Secretary to Sr. Adm. Officer-I, letter dt. 26-8-1996 by Asstt. Commissioner of Labour (C) to Shri K. N. Singh, Chief Controller (R & D) DRDO, letter dt. 19 May 2005 Conversion of first party i.e. Institute of Armament Technology, Pune under DRDO as Deemed University. These documents are exhibited at Exh.C-15/A to C-15/I.

7. The workmen mentioned in the reference order are in all 18 and their demand which is mentioned in the Schedule to the Reference Order is sent to this Tribunal for its adjudication in respect of their claim for regularization of service with the first party.

8. The second party, in order to prove their claim, examined Mr. Namdeo Shankar Shelkande at Exh.U-9, K. Natrajan at Exh.U-10, Shamsundar Sonaba Sable at Exh.U-11, C. B. Shelke at Exh.U-12, N. V. Satyan at Exh.U-13, Jagdish Prasad Ramdulari at Exh.U-14, K. Arutharan at Exh.U-15, Uma Shankar Surve at Exh.U-16, Ankush Ranu Jagtap at Exh.U-17, Raju Y. Chandane at Exh.U-18, K. Perumal at Exh.U-19, Deoram Kondiba Ghadsingh at Exh.U-20, Ashok Kaluram Jadhav at Exh.U-21, K. Vinayagam at Exh.U-22, M. Sankar at Exh.U-23, K. S. Samkutti at Exh.U-24, Ramesh Ganpat Kakade at Exh.U-25. These witnesses of the second party in their examination-in-chief by way of affidavit or by way of cross-examination have stated/ repeated the same thing as such to avoid the repetition, sum and substance of their evidence has been commonly considered. These witnesses are the second party who in the examination-in-chief by way of affidavit stated that they are in the employment of Officers Mess of the first party but no appointment orders were given to them. They have stated about their designation, date of birth and since they are working with the first party in the Mess. They have stated that prior to filing of the present case, they were given military ration cards but that was taken back by the first party and new ration cards were given, the first party gave them one room/quarter and from their salary Rs. 90 is deducted towards house rent/electricity/water

charges and they are not getting pay-slip and per year identity cards were issued them. These witnesses have stated that as per the directions of officers of first party they are doing their work and getting their salary. Their attendance is marked on muster and wages were paid on the wage sheet by taking their signature on the wage sheet. They have stated that they are getting one month's leave with salary yearly however they do not get holidays on 15th August and 26th January and 1st May. In cross-examination these witnesses have stated that whatever the certificates produced in the matter they were issued by Mess for getting employment in other places and entry pass was required for entry in the military premises and that was issued by the Security Officer of the first party and it was given for the specific period. These witnesses have stated that they have no documentary evidence to show that they are in the employment of the Mess. They have admitted that there was no advertisement published for the employment either from Mess or from first party; at the time of joining the service no application was made to the first party; they never received any letter of interview from mess or from first party; they have not received any letter of appointment from mess nor from first party. They have admitted that the officers Mess Managing Committee used to look after the work of mess. They have stated that their names were not recommended to the mess or from Employment Exchange, Social Welfare Department or District Collector. They have admitted that the work provided to them and the amount paid against that, was acceptable to them therefore they accepted the employment in the mess. They have admitted that they are not having any allotment letter from the first party itself for the room which they occupied; they had not submitted application for room to the first party; they have not filed any document to show that amounts of rent of room were deducted from their salary. They have admitted that there are no sanctioned post in the mess. They have further admitted that they are receiving the payment in the mess from the Management Committee. They have admitted that officers collected the funds from their salary and then make their payment from that fund. They have admitted that on request they gave experience certificate by sympathy. They are not having any identity card issued by first party. They have stated that they have not filed any documentary evidence before the Court to show that they have become the members of Pune Zilla Mazdoor Sangh. Their signatures do not appear on Exh.U-3 or Exh.U-6. They have admitted that there is nothing on record to show that they have authorized to the union to file the case before the Court on their behalf. They have admitted that they have not produced original documents on record. They have admitted that they are performing the work as per the direction of Managing Committee. The Mess Management Committee used to give leave as well as wages to them. They have admitted that Mess Management Committee is not made party before this court nor before Labour Authority. They have admitted

that they never worked with first party and therefore not entitled for any relief against first party. They have admitted that they along with other colleagues had filed the case before the High Court and said case was dismissed, that case was for permanency. They have admitted that they never worked since permanent posts were not available with the mess or with the first party.

9. The second party has examined at Exh.O-24 Lt. Comm. Sarveshchandra Sharma and in his examination-in-chief he has stated that he joined the first party on 10th July 2008 as a student. His rank in navy as Lieutenant Commander. He has been nominated as Mess Secretary from 3rd August, 2010 by the Vice Chancellor of first party. He is not aware whether the dead stock and the premises of the mess owned by the first party. He is not aware whether Officers Mess is registered or not and registered under any of the Act. He has no knowledge whether there is any audit in Officers Mess. Government quarters are made available to the employees of Officers Mess. No Govt. ration has been provided to the employees of the Mess. In cross-examination, he has stated that he joined the first party as a student. He has admitted that the first party is the Institute for Advancement of Training to the Officers of all the three wings in respect of defence weapons and advance technology. He has further admitted that this education programme is for a fixed period and the strength of the officers is different since after completion of the training the new student used to attend the training. He has further stated that in Officers Mess the contributions from the officers student are collected to make the payment of temporary workers working in mess. He is not aware whether there is sanctioned post sanctioned by the Government for Officers Mess. He has not collected any information in respect of Officers Mess before deposing in the Court. Questions were put to him about the 12 workers working in the Mess who are Government employees. He has denied other suggestions given to him in cross-examination.

10. The first party has examined Mr. T. V. Ananthasubramaniam at Exh.C-26 who is working as Deputy Registrar with the first party and in his examination-in-chief by way of affidavit, he has stated/repeated the same thing as per stand of the first party in the written statement. In cross-examination he has stated that he is working with the first party at Pune from 1st November 2010 as deputy Registrar. He is not staying in the premises of first party. He has stated about the documents produced by the second party with list Exh.U-33 and he has stated that all these information shown in 7 pages with list Exh.U-33 are downloaded from website of first party which are exhibited as U-34. He has stated that he has no personal knowledge about the recruitment of 18 workers involved in the present reference.

11. The Advocates for both the parties have stated that they have filed their written synopsis of arguments in the matter that may be treated as their written arguments. The Advocate for second party filed his written synopsis of argument at Exh.U-37 and in support of his argument he has relied on the case law of Hon'ble Supreme Court of India in the case of Bangalore Water Supply and Sewerage Board Vs. Rajappa. On the other hand, Advocate for first party has filed written synopsis of argument at Exh.C-40 and in support of her argument, she has relied on the case law reported in (1) 2006 AIR SCW 1991 (S.C) between Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors. (2) 2000 (84) FLR 732 (S.C.) between Union of India Vs. Uma Maheshwari & Ors. (3) 2002, DGLS (Soft) Pg. 270 (S.C) between P.U.Joshi and others Vs. Accountant General, Ahmedabad and others, (4)2001, DGLS (Soft) Pg.883 (S.C) between Mahatma Phule Agricultural University Vs. Nasik Zilla Sheth Kamgar Union, (5) 2007, DGLS, (Soft) Pg.1256, between Divisional Manager, Aravali Golf Club & Anr. Vs. Chander Hass & Anr. (6) 2001 ICLR 574 (Bom H.C.) between Patel Engineering Works Vs. Sri Santosh Kumar Rawool & 13 Ors. (7) 1992 (1) CLR 537 (S.C), between Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi & Ors., (8) AIR 1994 Pg.1638 (S.C) between Madhyamik Siksha Parishad Vs. Anil Kumar Mishra (9) 1997(1) CLR Pg.656 (S.C) between State of U.P. & Ors. Vs. Ajay Kumar.

Considering the ratio of case law cited by the Advocates for both the parties and considering the facts of present matter, I am deciding this case.

12. Before touching to the merits of the matter, here I would like to mention that the present reference is marked to the Second Industrial Tribunal which is vacant and charge of the Second Industrial Tribunal is given to First Industrial Tribunal that is to me being Presiding Officer of the First Tribunal, Pune. The President, Industrial Court, Maharashtra, Mumbai, by letter dt.21-12-2012 (Exh.O-25) directed this Court to dispose of the above reference as early being reference is old. As both the parties have submitted their written synopsis of argument, I am deciding this reference on the basis of material on record.

13. I have already pointed out above that the demand referred to this Tribunal between the above-named parties for its adjudication. It appears that names of 18 workmen are mentioned in the list attached to the reference order and on behalf of 18 workmen Pune Zilla Mazdoor Sangh filed Statement of Claim at Exh.U-6 in the matter and said Statement of Claim is signed and verified by one Sanjay Safai, Secretary of Pune Zilla Mazdoor Sangh. Further it appears to me that Vakalatnama of Advocate for second party is filed at Exh.U-3. It is mentioned in Vakalatnama that Secretary has authorized the Advocate on behalf of the second party to act, appear and plead on behalf of

second party and there is a signature of Secretary on the said Vakalatnama but his name, his designation and his address is not mentioned. The second party himself has pleaded in Para.2 of the Statement of Claim that first party is controlled by Defence Research and Development Organization of the Central Government. Admittedly the present reference is made by Ministry of Labour and Employment of the Central Government. It is mentioned in the reference order dt.2-9-2004 that Central Government declined to refer the dispute for adjudication vide letter dated 6-7-1998 and in view of the order in Writ Petition No.3214 of 1999 passed by the Hon'ble High Court at Bombay, the Central Government has referred the dispute for adjudication. The witness of the second party whose names are mentioned in the reference order and those workmen working with the Mess in their deposition have stated that they have not filed any documentary evidence to show that they are members of Pune Zilla Mazdoor Sangh, they have not signed Exh.U-3 and U-6 i.e. Vakalatnama and Statement of Claim. In my considered view, whenever industrial dispute is there as defined u/s 2(k) in respect of general demand, the registered Trade Union/Recognized Union functioning in the concerned industry has right to represent the party. Admittedly as mentioned above, the Central Government is an appropriate Government for the first party industry as such it is necessary for the second party union also to show that the union which represents as the second party in this matter, is a Trade Union as defined u/s 2 of the Trade Union Act, 1926 whose objects are not confined to one state the Central Government and in relation to other Trade Unions the State Government is an Appropriate Government. In this matter the workmen themselves have deposed that they have no documentary evidence to show that they are members of the second party union. It is not contended by second party in the present matter that the appropriate Government in relation to the second party union i.e. Pune Zilla Mazdoor Sangh is a Central Government and if object of the second party union is to run the union within the State, in my considered view, in that case, the second party union has no locus-standi to prosecute the demand on behalf of the workmen involved in the present reference. I have already pointed out above that workmen involved in the present reference have stated in their cross-examination that they have no documentary evidence to show that they are members of the second party union. I have already pointed out that there is no evidence on record to show that second party union is functioning with the first party or functioning in more than one State, as such the second party union has no locus standi to prosecute the demand on behalf of the workmen in the present reference as such the present reference itself is not maintainable.

Secondly as per provisions of law the permanent workmen has right to raise the industrial dispute on behalf of the temporary workmen/the workmen who are engaged

on contract basis or in relation to the workmen where there exists employer-employer relationship between the parties, if there is a recognized union or in absence of recognized union, if registered trade union is there which is connected with the persons of the employer that registered union or the permanent workmen have right to raise the industrial dispute on behalf of temporary employees or the employees who have employer-employee relationship with the employer and in the present reference, I find that these workmen were engaged by the Officers Mess which is run by the first party hence said mess is not registered which is just an organization of the officers for that contribution is collected from the officers to pay the wages of all the employees working in the mess and to do other expenses in the mess and first party is not at all connected with the workmen involved in the present reference. The workmen involved in the present reference in their cross-examination have categorically admitted that they were not appointed by the first party, they are not working with the first party but they are working with the mess, their wages were paid by the mess as such for all these reasons, it is clear to me that there does not exist employer-employee relationship between these workmen and the first party. Thus from above discussion and observation, it is clear that present reference as framed is not tenable under law and the second party has no locus standi to prosecute the present reference hence I answer Issue No.1 in the negative.

14. Once reference is made to the Tribunal under the provisions of Industrial Disputes Act, there is no doubt in my mind that the Tribunal has power and jurisdiction to entertain the reference. The Tribunal is required to adjudicate the dispute between the parties and pass the award, as such I do not find any substance in the objection raised by the first party in this respect that this Tribunal has no jurisdiction to try and entertain the present reference. In view of this, I answer Issue No.2 in the affirmative.

15. It is the contention of the first party even in written statement that it is not an industry as the first party is a Training Institute. However, it is on record that Government of Maharashtra being appropriate Government under the Factories act issued exemption license for the purpose of Section 48 to the first party under the Factories Act. It is on record that Central Government itself declared the first party as Deemed University. It is on record that students are taking training and it is an Educational Institution. It is on record that workshop is there to train the students and the said workshop is being operated with the help of power and machine and the Advocate for second party has rightly relied on the case law of Hon'ble Supreme Court of India in relation to case of Bangalore Water Supply & Sewerage Board Vs. Rajappa In view of the ratio of the Hon'ble Supreme Court of India in the said case law, I have no doubt in my mind that first party being educational institution declared as Deemed University by Central Government is an industry within the meaning of Section

2(j) of the I. D. Act. In view of this, I answer Issue No.3 in the affirmative.

16. I have already referred above that all 18 employees involved in the matter are working in the mess and there is no employer-employee relationship between the first party and the workmen involved in the present reference and there is no iota of evidence to show that 18 workmen involved in the matter were in continuous service of first party. The workmen involved in the present matter are working in the Mess and to that effect they have given admission in cross-examination that their salary was paid, their wages were paid by the Mess, they have not submitted any application to the first party employer, they have not given any appointment order by the first party. They have further admitted that they are not working on sanctioned post and very important admission they have given in cross-examination that they never worked with the first party therefore they are not entitled for the relief against the first party. This is the admission given by the witnesses of the second party in their cross-examination and the workmen themselves have stated in cross-examination that they are not entitled for the relief against the first party. It is further pertinent to note that in their cross-examination, they have admitted that they never worked on sanctioned permanent vacant post in the mess or with the first party. All these admissions given by the witnesses of the workmen involved in the present reference clearly show that all 18 workmen involved in the present reference failed to show that they have worked with first party continuously and have also entitled for regularization in the employment as claimed hence I answer Issue No.4 & 5 in the negative.

17. In view of my findings to above issues in negative, it is clear that all 18 workmen involved in the present reference are not entitled for the relief claimed as mentioned in their demand shown in the Schedule to the Reference Order, as such their demand is liable to be rejected. In view of this, I answer Issue No.6 accordingly.

18. In view of my findings on above issues, it is clear that reference is liable to be rejected however, I have quoted above the demand which is referred to this Tribunal for adjudication by the Central Government and after reading the reference order what I find that it is expected in the terms of reference that this Tribunal to suggest what other directions are necessary in the matter. What I find after perusal of the material on record that these workmen mentioned in the reference order are working in the Officers Mess of the first party for years together. After perusal of the documents produced by the first party in the matter with list Exh. C-15, Assistant Commissioner of Labour, Central informed in respect of these employees for payment of Minimum Wages based on minimum wages declared by Central Government for unskilled labourers. From this letter, it is clear that even minimum wages were not paid to these

employees by the Mess. If the statement given by the witness of workman in examination-in-chief i.e. the Secretary of Mess at Exh. O-24 in the matter is seen, he is not aware whether Mess is registered or not. In my opinion, when first party has issued gate pass to the visitors for security purposes or the security department of the first party issued gate pass/identity card for security purposes to the workmen involved in the present matter, in my opinion, it is for the first party to take care to get the mess registered with appropriate authorities, at least there should be accountability for the same. I have already pointed out that these workmen involved in the present reference are working in the mess for years together. As pointed out above as per letter issued by the Commissioner of Labour, Central, they were not getting even minimum wages and at least even it is expected that when first party institute is run by Central Government it should be the model employer and should extend at least all the benefits of Labour Laws to the workmen viz. minimum wages, ESIC (if applicable), protection under Employees' Compensation Act, 1923, Employees' Provident Fund and miscellaneous provisions Act, I. D. Act, safety and leave facility as provided under Factories Act and it is expected that the services of these workmen involved in the present reference shall not be terminated without following due process law. In my opinion, if these minimum protection under various Labour Laws are given to these workmen involved in the present reference at least these workmen can enjoy their life with dignity. I hope the first party will seriously consider this aspect and in view of the above observation mentioned above to the issues involved in the matter, it is clear that reference is liable to answer in negative and liable to be rejected and hence I pass the following award.

AWARD

- (1) Reference (IT) No. 57 of 2004 answers in negative and stands rejected.
- (2) No order as to costs.
- (3) Copies of this Award be sent to appropriate Govt. for necessary action.

Pune

Date : 1.4.2013

M. G. CHOUDHARY, Presiding Officer

नई दिल्ली, 23 जुलाई, 2013

का०आ० 1754.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 26/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.7.2013 को प्राप्त हुआ था।

[सं० एल-41012/128/2004-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd duly, 2013

S.O. 1754.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 26/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial dispute between the management of Northern Railway and their workman, received by the Central Government on 23.07.2013

[No. L-41012/128/2004-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT : Dr. MANJU NIGAM, Presiding Officer

I.D. No. 26/2008

Ref. No. L-14012/128/2004-IR(B-I) dated 20.03.2008

BETWEEN

The Divisional Organization Secretary
Uttar Railway Karmchari Union
283/63, Kha, Garhi Kannora (Premvati Nigam), PO-
Manak Nagar,
Lucknow-226 001
(Espousing cause of Shri Vijay Bahadur)

AND

The Senior Divisional Personnel Officer
Northern Railway
D.R.M. Office, Hazraganj
I.D. No. 26.2008
Lucknow

AWARD

1. By order No. L-41012/128/2004-IR (B-I) dated 20.3.2008 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the Divisional Organization Secretary, Uttar Railway Karmchari Union, 283/63, Kha,

Garhi Kannora (Premvati Nagar), PO - Manak Nagar, Lucknow and the Senior Divisional Personnel Officer, Northern Railway, D.R.M. Office, Hazraganj, Lucknow for adjudication to this Central Government Industrial Tribunal-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"Kya prabandhan uttar railway, lucknow dwara Shri Vijay Bahadur Verma putra Shri Ram Adhar Verma, diesel sahayak ko varsh 1983-84 ke panel main samayojit na karke varsh 1991-92 ke panel main samayojit karna uchit तथा नयासंगत है? Yadi nahi, to karmkaar kis anutosh ko pane ka adhikaari hai?"

3. The case of the workman's union is that the workman, Shri Vijay Bahadur Verma was appointed on the post of Cleaner on 20.12.76 and worked continuously till 03.09.81 when he has been retrenched illegally on 04.09.81. The said retrenchment was set aside by the CGIT- cum-Labour Court, Kanpur vide award dated 25.11.85 in I.D. No. 163/1983; and the workman, whose name finds reference at serial No. 42 of the award, was ordered to be reinstated with full back wages. It is further submitted that the workman was reinstated on 04.08.83 during pendency of the I.D. No. 163/1983. The workman's union has submitted that the appeal against said award was rejected by Hon'ble High Court, Lucknow Bench, Lucknow vide order dated 14.3.91 and its review too was rejected vide order dated 22.12.2004. Thereafter, the management preferred SLP before Hon'ble Apex, which was also rejected vide order dated 03.01.2006. It is alleged by the workman's union that the workman had been regularized on the post of Loco Cleaner vide order dated 30.08.91; whereas it included the other workmen junior to him in the panel for the year 83-84 on the basis of 120 days working only. It has been submitted that the workmen viz. Shri Amarjeet Singh and Abdul Aziz were included in the panel for year 1992; but on the directions of Hon'ble CAT, Lucknow vide order dated 26.04.93 and 25.04.2001 were included in the panel for the year 83-84; likewise, the workmen viz. Shri Pratap Bahadur and Ahmad Ali were included in the panel for the year 1992; but on the directions of this Tribunal in I.D. No. 28/2004 and 12/2005 respectively, they have been included in the panel for the year 83-84. Accordingly, the workman's union has prayed that the workman be included in the panel for the year as other workmen, junior to him have been included.

4. The management of the railways has denied the claim of the workman's union by filing its written statement, stating therein that the workman was re-engaged in compliance of award dated 19.02.87 of the CGI-cum-Labour Court, Kanpur and was absorbed and regularized as per availability of regular vacant post, therefore, he cannot claim the seniority over and above those persons, who were given seniority by the order of the Hon'ble Central

Administrative Tribunal as well as by the order of this Tribunal as the workman was not a party in the respective cases. It has relied on Ramakotaiah vs. Union of India 2007 (6) A.W.C. 6556 (S.C.); wherein Hon'ble Apex Court has held that the seniority of casual labour in the railway is treated as temporary, but subsequently absorbed in temporary/permanent cadre, to be reckoned from the date of their regular appointment. Accordingly, the management of the railways has prayed that the case be rejected as devoid of merit.

5. The workman's union has filed its rejoinder, wherein he has stated nothing new apart from reiterating the averments already made by his statement of claim.

6. The workman's union has filed documentary evidence in support of the claim; whereas the management has filed none. The workman filed its evidence and was cross-examined by the authorized representative of the management. On conclusion of the workman's evidence, the case was fixed for managements' evidence on 28.09.2010; but the management did not turn up for its evidence for several dates in a long span of time, which led to closing opportunity of evidence on behalf of the management vide order dated 28.06.2012 and 26.07.2009 was fixed for arguments. The management again did not turn for putting forward its arguments or get the order dated 28.06.2012; accordingly, heard authorized representative of the union only and reserved the file for award, keeping in view the reluctance of the management of contest their case and long pendency of the case since 2008.

7. I have given my thoughtful consideration to the arguments forwarded by the authorized representative of the management and perused entire evidence on record.

8. It is the case of the workman that initially he was illegally terminated and when he was reinstated on 04.08.1983, in the wake of award of the CGIT-cum-Labour Court, Kanpur in I.D. No. 163/1983, the management did not include him in the panel for the year 83-84 and instead he was included in the panel for the year 91-92. It is also the case of the workman's union that the management included other junior workmen in the panel of 83-84 on the basis of 120 day's working up to 30.09.81 and few similarly situated other workmen viz. Amarjeet Singh & Abdul Aziz in the compliance of orders of Hon'ble CAT and Shri Pratap Bahadur and Ahmad Ali in compliance of this Tribunal's order. He has substantiated its pleading with the help of his oral evidence.

9. In rebuttal, the management has come forward with pleadings that the re-engagement of the workman was in compliance of award dated 19.02.87 of the CGIT-cum-Labour Court, Kanpur and was absorbed and regularized as per availability of regular vacant post, therefore, he cannot claim the seniority over and above those persons, who

were given seniority by the order of the Hon'ble Central Administrative Tribunal as well as by the order of this Tribunal as the workman was not a party in the respective cases. The management has failed to corroborate its pleadings through some cogent evidence.

10. The workman has sought empanelment in the year 83-84 on the basis on 120 days' working up to 30.09.81 as the other juniors were included. He has mentioned case of one such junior viz. Abdul Aziz who had been included in the panel for the year 83-84 in compliance of order of Hon'ble CAT. It is noteworthy to mention here that Abdul Aziz was terminated w.e.f. 4-10-1981 and was reinstated by Labour Court and the same was confirmed by order dated 05.02.1990 Hon'ble High Court confirmed the same. On reinstatement he was put for screening in the year 1991 whereas workmen junior to him had already been screened and empanelled in the year 1982. Therefore, the workman moved an original application before Hon'ble CAT, Lucknow for inclusion of his name in the panel for the year 1982. Hon'ble CAT, vide their order dated 25.04.2001 directed the management as under:

"to include the name of the applicant in the panel frame on the basis of screening held in the year 1982..... and place the name of the applicant at appropriate place as Cleaner over and above his juniors and to further accord him all the consequential benefits."

The management challenged the above order of the CAT before Hon'ble High Court, Lucknow Bench vide writ petition No. 68 (SB) of 2002, which was disposed of vide their order dated 20.03.2006 as under.

"Once the termination order has been held to be void and has been set aside with the specific direct that the respondent shall be reinstated in service with full back wages, his continuity in service cannot be taken away nor he can be treated as new appointee or fresh appointee after passing of the order by the labour court, which was confirmed by the High Court. Reinstatement in the aforesaid circumstances would necessarily mean continuous service from the date of appointment, in this case initial engagement, unless, of course, there were some directive to the contrary by the Court. The respondents had been taken into service only because of the order passed by the labour court, confirmed by the High Court, and therefore, he was entitled to have all the consequential benefits arising out of the orders passed by the Court. The termination order having been quashed, the respondent would also be entitled to seniority and consequential benefits fixation of wages and salary etc."

The management moved review petition No. 129/2006 of the above order dated 20.03.2006, which was dismissed being not maintainable vide order dated 15.05.2006. Thereafter, the management included the name of the workman, Abdul Aziz in the panel for the year 1982.

11. Admittedly, the workman was working with the management of Northern Railways since 20.12.76 and was terminated w.e.f. 04.09.81 and was reinstated back in the services in compliance of award dated 25.11.85 given by the CGIT-cum-Labour Court, Kanpur in I.D. No. 163/83; and also in view of the fact that appeal against said award vide writ petition No. 5901/1986 and its review vide review petition No. 34/1991 before Hon'ble High Court were dismissed vide orders dated 14.3.91 and dated 22.12.2004 respectively. The SLP No. 11945(c) of 2005 before Hon'ble Apex Court too was dismissed vide order dated 03.01.2006. The workman was reinstated on 04.08.83 during pendency of industrial dispute before Labour Court and was included in the panel for the year 1991-1992.

Thus, the main issue for consideration before this tribunal is that as to whether the workman is entitled to be included in the seniority list of 1981 of which he was deprived consequent to his alleged illegal termination in the year 1981? And if it comes out in positive then its effect.

12. In the instant case the workman was not in the service of the opposite party in the year 1981 due to illegal termination of his services. The CGIT-cum-Labour Court, Kanpur setting aside the termination directed for reinstatement with full back wages. This means that when the Tribunal awarded for full back wages then it assumed that the workman was in continuous service for the period of termination. Once the order termination was held illegal and the same was held to be void and has been set aside by the Labour Court with the specific direction to the management of the railways that the workman shall be reinstated in service with full back wages then his continuity in service cannot be taken away nor he can be treated as a new appointee or fresh appointee after passing of the order by the labour court, which was confirmed by the Hon'ble High Court. Therefore, reinstatement in the aforesaid circumstances would necessarily mean continuous service from the date of appointment, in the instant case initial engagement, unless of course, there were some directive to the contrary by the Court. The respondent had been taken into service only because of the order passed by the labour court, confirmed by the High Court, and therefore, he is entitled to have all the consequential benefits arising out of the orders passed by the Court. The termination order having been quashed, the workman shall also be entitled to seniority and consequential benefits. Moreover, the management has not turned up to substantiate its

version before this court; and it is settled law that mere pleading are no proof.

13. Therefore, in view of the circumstances of the case and discussions made hereinabove. I come to the conclusion that the action of the management not including the workman in the panel for the year 1983-1984 is not proper and justified. Accordingly, the workman is entitled to be included in the panel for the year 1983-84 over his juniors after complying the procedure, within two months from the notification of the award. Further, he shall also be entitled for consequential financial benefits accrued to his next junior.

14. Award as above.

Lucknow

12th June, 2013

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 23 जुलाई, 2013

का०आ० 1755.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 31/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-07-2013 को प्राप्त हुआ था।

[सं. एल-41011/100/2010-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd July, 2013

S.O. 1755.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2011) of the Central Govt. Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and their workmen, received by the Central Government on 23/07/2013.

[No. L-41011/100/2010-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

Present : Dr. Manju Nigam, Presiding Officer

I.D. No. 31/2011

Ref. No. L-41011/100/2010-IR(B-I) dated 14-03-2011

Between

Mandal Sanghatan Mantri

Uttar Railways Karmachari Union

283/63 KH, Gadi Kannora (Premvati Nagar)
PO-Manak Nagar, Lucknow-16
(Espousing cause of Shri Badri Prasad)

And

Senior Divisional Railway Manager (Personnel)
Northern Railway
Hazratganj,
Lucknow.

AWARD

1. By order No. L-41011/56/2008-IR(B-I) dated 17-08-2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sanghatan Mantri, Uttar Railways Karmachari Union, 283/63 KH, Gadi Kannora (Premvati Nagar), PO-Manak Nagar, Lucknow and Senior Divisional Railway Manager (Personnel), Northern Railway, Hazratganj, Lucknow for adjudication to the CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"Whether the demand of union regarding Placing Shri Badri Prasad S/o Shri Panchu, Callman, Locoshed, Lucknow in the Penal of the year 1983-84 above his junior, is Legal and justified? to what relief the workman is entitled?"

3. The case of the workman's union, in brief, is that the workman, Badri Prasad had been appointed as cleaner in the Loco-Shed, NR, Lucknow; and he had been retrenched illegally on 04.09.81; which was agitated by him before CGIT-cum-Labour Court, Kanpur. The CGIT-cum-Labour Court, Kanpur vide their award dated 19.02.87 and 25.11.85, reinstated the workman with wages. It has been submitted by the workman's union that the appeal before Hon'ble High Court and Apex Court had been dismissed; and accordingly, the workman had been reinstated on 03.08.83. It has been alleged by the union that the railways regularized the workman on 30.08.91; whereas the other juniors were screened and regularized after including their names in the panel for the year 1983-1984. Hence, the workman's union has prayed that the workman be included in the panel for the year 1983-84.

4. The management of the Railways has disputed the claim of the workman's union by filing its written statement; wherein it has mentioned that the present claim has been raised by a unrecognized union and the same is time barred by the limitation as the same has been preferred after a long gap of about 25 years. It has further submitted that

the workman was re-engaged in compliance of award of the CGIT-cum-Labour Court, Kanpur and was absorbed and regularized as per availability of regular vacant post, therefore, he cannot claim the seniority over and above those persons, who were given seniority by the order of the Hon'ble Central Administrative Tribunal as well as by the order of this Tribunal as the workman was not a party in the respective cases. It has relied on Ramakotaiah vs. Union of India 2007 (6) A.W.C. 6556 (S.C.); wherein Hon'ble Apex Court has held that the seniority of casual labour in the railway is treated as temporary, but subsequently absorbed in temporary/permanent cadre, to be reckoned from the date of their regular appointment. Accordingly, the management of the railways has prayed that the case be rejected as devoid of merit.

5. After filing of the written statement the date was fixed for the rejoinder and when no rejoinder was filed the case was fixed for parties' documents.

6. On the date fixed for parties' documents, the authorized representative of workman's union submitted that it does not want to pursue the present claim and wants to withdraw the same as the workman concerned has since retired and has received all financial benefits from the management. He made an endorsement on the order sheet to the effect that "is vaad se sambandhit shramik sevanivrat ho gaya hai atah union vaad vaapas leti hai". This move of the workman's union is not opposed by the authorized representative of the management who endorsed 'not opposed' in this context on the order sheet.

7. In view of the facts and circumstances of the case and endorsement made by the authorized representative of the union not to pursue the present industrial dispute and withdrawal of the same and no opposition by the authorized representative of the management, there is no need to proceed further with the present industrial dispute.

8. Accordingly, 'no claim' award is given in the present industrial dispute. No relief is required to be given to the workman concerned as the Trade Union's does not want to pursue their case for relief claimed. The reference under adjudication is answered accordingly.

9. Award as above.

Dr. MANJU NIGAM, Presiding Officer

Lucknow.

25th March, 2013.

नई दिल्ली, 23 जुलाई, 2013

का०आ० 1756.—औद्योगिक विवाद अधिनियम, 1947 (1947 कर 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एन०एफ० रेलवे के

प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, गुवाहटी के पंचाट (संदर्भ संख्या 12/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.07.2013 को प्राप्त हुआ था।

[सं. एल-41011/24/2008-आईआर(बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 23rd July, 2013

S.O. 1756.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2008) of the Central Govt. Industrial Tribunal-cum-Labour Court, Guwahati as shown in the Annexure, in the industrial dispute between the management of Maligaon, N. F. Railway, and their workmen, received by the Central Government on 16/07/2013.

[No. L-41011/24/2008-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

PRESENT: Sri L.C. Dey, M.A., LL.B., Presiding Officer,
CGIT-Cum-Labour Court, Guwahati.

In the matter of an Industrial Dispute

Between:

The Management N.F. Railway, Mligaon,
Guwahati.

-Vrs-

Their Workman Sri Subhash Banik.

Ref. Case No. 12 of 2008.

Appearances.

For the Management: Mr. K.C. Sarmah, Advocate.

For the Workman: Mrs. M. Bora, Advocate.

Date of Award: 20.03.2013.

AWARD

1. This Reference case has been initiated upon the Order No. L-41011/24/2008-IR(B-I); Dated: 30/09/2008, issued by the Ministry of Labour & Employment, Government of India, for adjudication of the dispute between the management of N.F. Railway, East Mligaon, Guwahati-11 and the workmen Subhash Banik and five others. The Schedule of the Reference is as under:

SCHEDULE

"Whether the action of the management of N.F. Railway by denying promotion to Sri Subhash Banik,

Technician Gr. I (Turner) and five others as per Annexure, is legal and justified? If not, what relief they are entitled to?"

2. On receipt of this order from the Ministry this Reference case has been registered and notices were served upon both the parties. The Management N.F. Railway and the workman Subhash Banik alone appeared and contested the proceeding by filing their respective claim statements/ written statements along with relevant documents.

3. Be it mentioned here that the remaining 5 other workmen namely Sri N.G. Mitra (UR), Shri Khagendra Singh (UR), Sri Kaliram Baruah (UR), H.G. Rabha (ST) and Swapan Das (UR) appeared through their General Secretary, Learned Advocate and submitted written statement stating inter-alia, that Sri N.G. Mitra, Khagendra Singh and Kaliram Baruah were working as Turner and Sri H.G. Rabha and Swapan Das were working as Machinist under Wagon repairing Shed/Loco Running Shop at Pandu and after rising this Industrial Dispute Sri Subhash Chandra Banik retired from service on superannuation without getting his due promotion and seniority. However, the remaining 5 workmen as aforesaid got their promotion with seniority. Hence, the aforesaid 5 numbers of workers have no further grievances before the Tribunal. Thus only workman Sri Subhas Ch. Banik remains in the fray.

4. The case of the Union in respect of the workman Sri Subhash Banik, in brief, is that the workman was appointed by the N.F. Railway Divisional Headquarter, Maligaon as Khalasi on 12.12.65, afterward he was promoted to Turner Grade II from Grade III on 19.7.82 and thereafter to Turner Grade I on 28.01.1997 in Machine Trade. He was working in the Wagon repairing shop as artisan staff. In the mean time the Wagon repairing shop at Pandu and Loco Running Shed were closed, as a result, the workman along with other workers were deployed at Lumding Division, N.F. Railway in Carriage and Wagon Department. They were kept separately by creating supernumerary posts and the establishments of those staff are maintained at the Office of the Mechanical Section of Chief Personal Officer, N.F. Railway, Maligaon. Workman should have been merged with the seniority list of Carriage Department but they were kept separately and hence, they were deprived of their rightful expectations for getting promotion in time. The workman Subhash Banik lastly served as Technician Grade-I (Turner) under Senior C.D.O., Guwahati, N.F. Railway under Chief Mechanical Engineer, N.F. Railway Maligaon, and he was on the verge of promotion to the rank of Senior Technician in the scale of pay Rs. 5000—8000 the post of which was lying vacant since December, 2005 under Senior C.D.O., Guwahati. The workman being the senior most person in the Trade deserve to be promoted against the existing vacancy created upon the superannuation of Shri S.N. Das, Senior Technician on 31.12.2005. Due to non fulfillment of legitimate expectation by the Management in spite of numerous correspondences

made by the workman in this regard and pointing out various anomalies and discrimination done to him depriving his promotional aspects caused irregularities in the services of the workman and grievances were ventilated through representation and written appeal before the Management. Which did not care to reply a single letter ever to the Rail Mazdoor Union and in this way the workman retired on superannuation on 30.09.2007 without getting promotion to the next higher rank which should have been effected with effect from 01.01.2006. The matter was taken up with the higher authority of N.F. Railway, Railway Board, New Delhi and for not getting any fruitful result it was referred to the Labour Commissioner (Central), Guwahati for reconciliation. But the reconciliation failed because of non appearance of Management and hence, the present Reference.

5. The Management of N.F. Railway vehemently opposing the contention of the Union submitted their written statement stating, inter-alia, that the Reference is not maintainable in proper form and in law as well as in fact, which is liable to be dismissed. The Management averred that the workman along with other staff were separated by creating supernumerary posts and the establishment of those staff were maintained in the office of the Mechanical Section, Chief Personnel Officer, N.F. Railway, Maligaon due to closure of Wagon Repairing Shop, Pandu; and the workman were deployed in Coaching Depot on utilizing basis and were kept separately by creating supernumerary post in the establishment of those staff as they were kept separately creating supernumerary post the question of merger with the Coaching Depot does not arise. As such, the contention of the workman that due to non merger the promotional aspects of this present workman along with others was frustrated and they were deprived of their rightful expectation is denied by the Management. Further case of the Management is that in order to fill up the post Senior Technician (MCM) in scale Rs. 5000 to Rs. 8000 eligible candidates from Machinist Grade-I in the scale of Rs. 4500 to Rs. 7000 and Turner Grade-I (Tech. Grade) in Scale Rs. 4500 to 7000 were taken; and the number of Staff in the grade of Machinist Gr. I was only 3, Turner (Tech. Gr.I) was only 2. The Machinist category Sri H.G. Rabha (ST) was senior most being his date of promotion to the grade was 20.12.93 and in the category of Turner/Gr.I (Tech. Gr. I) Sri Subhash Ch. Banik was senior most being the date of promotion to the grade was 01.10.1997; and when combined seniority list was prepared with these two categories Sri. H.G. Rabha (ST) Machinist Gr. I became the senior most and the post of Sr. Tech. (MCM) in grade Rs. 5000 to Rs. 8,000 was filled up by Sri H.G. Rabha (ST) on the basis of suitability Test. As such, there is no anomalies and violation of existing norms of promotion in respect of Sri Subhash Ch. Banik.

6. The workman examined 2 witnesses including himself while the Management examined one Swapan

Chakrabarty, the Head Clerk, Personnel Branch, C.P.O. Office, N.F. Railway, Maligaon, Guwahati.

7. Decisions and reasons therefore:

Let me discuss the evidence of both the sides. According to the workman Subhash Banik, (W.W.1), he was appointed as Khalasi on 12.12.65 in the N.F. Railway Division Headquarter, Maligaon and was deployed in Wagon Repairing Shop at Pandu. Afterwards he was promoted to Turner Grade-II from Grade-III on 1982 and thereafter Turner Grade-I on 28.10.1997 under the Chief Mechanical Engineer, Maligaon and this contention is found to be admitted as it reveals from the W.S. submitted by the Management. Subsequently the establishment Wagon Repairing Shop at Pandu was closed while the W.W.1 was deployed in the Carriage Wagon Department of N.F. Railway. The W.W.1 along with other surplus staff were kept separately by creating supernumerary Posts and the establishments of those staff were maintained in the office of Mechanical Section of Chief Personnel Officer, N.F. Railway, Maligaon. Lastly, he served as Technician Grade-I of Turner category under the Chief Mechanical Engineer, N.F. Railway Maligaon and he was the senior most Technician and was fit to be promoted to senior Technician in the Scale of Rs. 5000-8000 the post of which was lying vacant since December, 2005 under Senior C.D.O, Guwahati. The W.W.1 being the senior most person in the Trade deserves to be promoted against the existing vacancy after Sri S.N. Das, Senior Technician, who retired on 31.12.2005 and his expectation to get promotion with effect from 1.1.2006 could not be fulfilled by the Management for unknown reason. Instead of Sri H.G. Rabha, Machinist Grade-I has been promoted as Master Crafts Man in a slot which is against the provision of Rules. He further stated that there can not be any post of Master Crafts Man in the Machinist Trade Grade-I according to Railway Rule, but for the purpose of promotion Machinist Trade and Turner Trade was amalgamated violating the Rules and also depriving him from his rightful expectation. While there was no impediment to promote the workman (W.W. 1) as per the provision of Rules of Management framed from time to time. Further contention of the W.W.1 is that as he was deprived of his due promotion because of wrong application of Rules by adhering to the post based roster and he retired on superannuation on 30.9.200, he is entitled to proforma promotion with effect from 1.1.2006 and to get all financial benefits. In his cross-examination, the W.W.1 categorically mentioned that his promotion was due on 1.1.2006 consequent upon the retirement of Sri S.N. Das on 31.12.2005, and thereafter Mr. Hareswar Haloi retired on superannuation in the year 2005 and then also his promotion was due but he was not considered by the Management. He also mentioned that H.G. Rabha was promoted in place of Hareswar Haloi who was a Machinist. The workman (WW1) categorically denied the suggestion tendered by the Management that H.G. Rabha was promoted as Grade-

I Machinist in the year 1993 whereas he got his promotion as Turner in the year 1997; and that the Turner and the Machinist were amalgamated together and accordingly seniority was counted and promotion was done on the basis of seniority. He again mentioned that he did not know when H.G. Rabha joined in service nor he had submitted any document to show that H.G. Rabha was junior to him.

The workman witness No.2, Sri Pradip Kumar Saha, the Joint Secretary of Rail Mazdoor Union, Pandu stated that initially the workman Subhash Banik was deployed in Wagon Repairing Shop at Pandu and afterwards he was promoted to Turner Grade-III to Grade-II in 1982 and then to Grade-I on 28.10.97. Due to closure of Wagon Repairing Shop at Pandu the workman was re-deployed in Carriage and Wagon Repairing Department in N.F. Railway and the workman and the other surplus staff were kept separately by creating supernumerary post and the establishment of those staff were maintained at the office of the Mechanical Section of Chief Personnel Officer, N.F. Railway, Maligaon. The workman was the senior most Technician and was fit to be promoted to Senior Technician in the Pay Scale of Rs. 5000-8000 and the post was vacant since December, 2005 in the event of retirement of S.N. Das, senior Technician on 31.12.2005. He also mentioned that in stead of promoting the workman according to Rule, Sri H.G. Rabha, Machinist Grade-I has been promoted as Master Crafts Man and for this purpose of promotion Machinist Trade and Turner Trade were amalgamated violating the Rule and was deprived the workman from his rightful expectation. As such, the workman has been perennially deprived from his due since 1993 including incorrect application of Rules during restructuring of cadres in his department under Board's Scheme effective from 1.11.2003. Thus the workman is entitled to proforma promotion with effect from 01.01.2006 and to get all financial benefits although he has retired. In course of his cross-examination, W.W. 2 stated that during the pendency of the proceeding other workmen namely N.G. Mitra, Khagendra Singh, Kaliram Baruah, H.G. Rabha and Swapan Das have been promoted and they are not interested to proceed with the case and the Union is also not interested to proceed with these 5 workmen who ventilated their grievances before the Union in black and white which was submitted before the Assistant Labour Commissioner. He also added that when the vacancy had arisen for the post of Master Crafts Man in the Turner Grade that should have been filled up by the senior man namely the workman Subash Banik but it was not done by the Management rather H.G. Rabha Machinist, Grade-I was promoted illegally as Master Crafts Man by maintaining inter-se seniority. It is also stated that at the time of retirement of S.N. Das, only one post of Mastar Crafts Man was vacant in Turner Grade and at that time there was no post of Master Crafts Man Machinist. He categorically denied that there was a individual Master Crafts Man post in each Trade.

8. The Management on the other hand, examined Smti Swapna Chakrabarty, Head Clerk, Personnel Branch, C.P.O. Office, N.F. Railway, Maligaon, who deposed that the workman Subhash Banik was promoted to Grade-I Turner in the year 1997 and Sri H.G. Rabha, Machinist, Grade-I was promoted in the year 1993 and both of them worked together in the Wagon Repairing Depot, Pandu. Upon closure of the Wagon Repairing Depot, Pandu, in the year 1994 the existing staff were transferred to Coaching Depot Office (C.D.O), Guwahati for emergency work at utilisation basis. She has produced zerox copies of a roster for promotion of Turner Grade-I and Machinist Grade-I numbered as Ext. A & B (under objection) which shows that the workman Subhash Banik was promoted to Grade-I on 1.10.1997 and H.G. Rabha was promoted to Machinist Grade-I on 20.12.93. She also stated that after Grade-I as Turner and Machinist there needs promotion in Senior Technician (Master Crafts Man), and Mr. S.N. Das, Senior Technician (MCM) retired on 31.12.2005 who was of Machinist Grade and consequent upon his retirement Sri H.G. Rabha was promoted to that Post with effect from 1.1.2006 since the Sri Rabha belongs to Machinist Trade. The Management witness No.1 also produced a photo copy of order dated 18.6.96 (marked as Ext. C (under objection) wherein Machinist and Turner Grade-I were amalgamated/combined and next promotion would be senior Technician (MCM) from amalgamation/combined list. She said that H.G. Rabha was rightly promoted in the next grade. She denied the suggestion tendered by the workman that there should be separate MCM from the respective Machinist and Turner Grade and that the promotion of Subhash Banik was not considered on the retirement of Mr. S.N. Das. She also added that even if there is no amalgamation/combined list still H.G. Rabha was senior to Subhash Banik and in normal course he should get promotion; and that the workman Subhash Banik also did not file any objection before the authority that his promotion was not considered by the department in case of the promotion of Grade-I. The cross-examination of the M.W.1 says that no new Circular was issued by the Management excepting the Ext. C (under objection) in respect of amalgamation (combined promotion to Master Crafts Man) regarding Turner and Machinist and the Post of MCM was in existences since 1987. She further said that she did not know whether the workman Subhash Banik got the restructuring benefit if any but the workman got his usual promotion in the year 1997 as Grade-I and after amalgamation of the Post Turner and Machinist a combined seniority list was prepared wherein Mr. R.G. Rabha was senior to Mr. Banik.

9. In course of argument Mrs. M. Borah, learned Advocate for the workman submitted that the workman Subhash Banik was appointed as Khalasi (Artisan) on 12.12.1965 and he was promoted to the Post of Turner Grade-III on 19.7.82 and from Turner Grade-III to Grade- II on

16.5.1988, and from Turner Grade-II to Grade-I on 28.10.97; and the workman was redeployed along with others in Carriage and Wagon Department of Lumding Division, N.F. Railway and they were given the status of supernumerary post holder by creating by special supernumerary post for them as such, the workman was to be governed by the Rules of seniority, promotion and restructuring/ up gradation of posts and other service conditions under the Rules concerning special supernumerary post as per the Rules formulated in the Railway Rules and the Master Circulars issued by the Railway Board from time to time. In this connection Mr. Borah, learned Advocate for the workman referred the Standard Book on Railway Rules and Establishment by K.P. Sharma 2003 Edition. Mrs. M. Borah also relied upon the Railway Board Master Circular No.22 (1) regarding provisions on Supernumerary Posts; (2) Railway Board's Circular No. PC/III/82/PS-3/10 of 14.2.86 regarding introduction of Post of MCM; (3) Circular No. PC-III/91/CRC/1 dated 27.1.93 for restructuring certain Group-C & D cadres and the Railway Board's Letter No. PC-III/2003/CRC/6 dated 09.10.03.

Learned Advocate for the workman, in the light of the Railway Board's Circulars/Rules as mentioned above submitted that the supernumerary post is a shadow post and it can be created only if an other vacant permanent or temporary post is not available for the Railway servant whose lien is to be protected by creation of supernumerary post; and it stands earlier since the Railway Servant for whom it was created vacates its on account of retirement or confirmation in another permanent post or for any other reason. Mrs. Borah, learned Advocate also added that the Post of Master Craftsman for the first time at Scale Rs.425-460/- was introduced to the extent of 10% of the skilled Grade-I, II & III and the said post was introduced in percentage prescribed for the total number of post of 19 Turner Category and these posts of Turner Grade-I by creating a single post of MCM (Turner). As per the Railway Board's Circular dated 27.1.93 as mentioned above regarding restructuring of certain Group-C and Group-D cadres with effect from 1.3.93 the applicable percentage of Artisan category the workman was not benefited from the policy whereby percentage of strength of Turner Grade-I was increased from 27% to 35% and one additional post of Turner Grade-I was to be created since the workman was in Turner Grade-II as on 1.3.1993. But the Management never implemented this policy in any Artisan Grade in the said establishment. It is also pointed out by the learned Advocate for the workman that the evidence of Management witness No.1 Mrs. Swapna Chakrabarty regarding implementation of cadres restructuring with effect from 1993 is totally false and her statement has not been supported by any documentary evidence.

10. Mr. K C. Sarma, learned Advocate for the Management of N.F. Railway, on the other hand, submitted

that the present workman was appointed as Khalasi in the year 1965 while the workman Sri H. G. Rabha was promoted as Machinist-I in the year 1992 and said H.G. Rabha belongs to Machinist Grade and workman Subhash Banik was promoted to Turner Grade-I in 1997 and hence Mr. H.G. Rabha was senior. Mr. Sarma also stated that the workman Sri S. N. Das belongs to Turner Grade. Since H. G. Rabha was Machinist Grade-I, he was promoted to Master Crafts Man (subsequently re-named as senior Technician) and as there is no Master Crafts Man Post/Senior Technician in Turner Grade, the workman Subash Banik was not entitled to get promotion as such, the claim of the workman is liable to be rejected.

11. On scrutiny of the documents submitted by the workman it appears that vide Railway Board's Circular (Annexure-I) No. PC III/91/CRC/1/dated 27.1.93 regarding restructuring of certain group C & D cadres in accordance with the revised percentages indicated against the post with reference to the sanctioned cadre strength on 1.3.1993; and the said order is applicable on the regular cadres of the open line establishment including workshop and production units. By this order percentage of Artisan staff namely the Turner-I has been raised from 27% to 35% and the Master Crafts Man (Turner) 3% to 5% (Annexure-E) of the aforesaid circular (Annexure-II). It is also found from the Railway Board Circular No. PC III/82/PS-3/10, dated 14.2.1986 (Annexure-II) the post of Master Crafts Man was introduced for the first time to the extent of 10% of the skilled Grade-I and not more than 3% of total Post of Artisan category in Grade-I, II and III. Thus it is clear that the workman was in the grade of Turner Grade-II as on 1.3.1993 and he was not benefited from the policy whereby the percentage of strength of Turner-I was increased from 27% to 35%. The Management side also has not been able to produce any evidence rebutting the aspect of the matter as contended by the workman.

12. Further the learned Advocate for the workman relied upon Railway Board's Circular No. PC.III/2003/CRC/6 dated 9.10.2003 (Annexure-III) wherein the revised percentage of post of Artisan Cadre were prescribed and the restructuring of Group C & Group D staff common to all engineering department including the workshop which is shown below:

Category	Grade	Existing %age	Revised %age.
Artisan Staff	5000-8,000/-	5	8
	4,500-7,000/-	35	41
	4,000-6,000/-	30	26
	3,050-4,590	30	25.

13. Consequent upon the restructuring of the two posts Master Crafts Man in Turner Trade as it appears from the evidence of both the sides, one Post was already in existence and the incumbent Sri S.N. Das was Master Crafts Man as on 1.11.03 but the Management has ignored to implement the said Circular dated 9.10.03 without creating the Addl. Posts of Master Crafts Man for the Turner Trade. From the provisional seniority list of Turner Grade- II, (Annexure-IV) and the promotion order No. 9/1997 vide Memo No. E/210/III/I/pt.II dated 28.10.1997 (Annexure-V) issued by the Management it appears that the workman was promoted to Turner Grade-II on 16.5.88 and from Turner Grade-II to Turner Grade-I with effect from 1.10.1997. The seniority list (Annexure-IV) in respect of Turner Grade-II, shows that Sri N.G. Mitra was immediate senior to the workman and subsequently Sri N.G. Mitra Turner Grade-I was promoted and became the senior most Turner-I and as per the restructuring formally Sri N.G. Mitra Turner-I, would have got the promotion to the Post of Master Crafts Man (Turner), but in the mean time Sri N.G. Mitra, Turner Grade-I retired on 30.11.05. Similarly after retirement of Sri S. N. Das, the Master Crafts Man (Turner) i.e. on 31.12.06 the Management did not implement the principles of restructuring of the post.

14. The Railway Board in their Circular dated 9.10.2003 (Annexure-III) in para-2 made it clear that the said order is applicable to regular cadres excluding surplus and supernumerary post of the open line including Workshops and productions and as such, the supernumerary post of Turner is also covered by this Circular. The Board also vide their Circular No. PC. III/2004/CRC/13 dated 17.6.2004 (Annexure-VI) clarified that all supernumerary posts should be set off first before effecting in promotions from the lower grades to higher grade and the required matching circular, post on the existing number of posts should be worked out and the circular affected in such manner that the final cadre of post results in the specified percentage discrimination between the grades.

15. Thus it is clear from the above discussion that the management has not implemented the procedure for restructuring in maintaining the seniority as well as promotion to the higher grades of the Turner (Artisan) in the light of Board's Circular No. PC. II/2003/CRC/6 dated 9.10.03, No. PC. III/91/CPC/1 dated 27.1.93 and No. PC. III/82/PS-3/10 dated 14.2.86 in respect of the workmen including the present workman Subhash Banik. As such, I find no reason to entertain the argument raised by learned Advocate for the Management. Learned Advocate for the Management put forward another argument that at the relevant time there was only one post of Master Crafts Man (senior Technician) and as Sri H.G. Rabha belongs to

Schedule Tribe category as well as senior most Machinist Grade-1 and by promoting Sri H.C. Rabha, Master Crafts Man in no way affected the legal right of the workman Subhash Banik Since the restructuring formula has not been applied by the Management and also there is no provision for reservation in case of single post as revealed in the Railway Board's Letter No. 95-E(SCT)1/49/5(I) dated 21.8.97 (Annexure-VII) regarding model roster for cadre strength of direct recruitment and reservation roster of Group-C & Group-D post of promotion category, this argument is also found not relevant in the instant case.

16. In this connection Mr. M. Borah, learned Advocate for the workman referred the decision of the Hon'ble Supreme Court held in Srinivas Theatre —Vs— State of Tamilnadu (1992) 1 SCC 645, wherein it was held that Article 14 ensures that like shall be treated alike but it does not provide that unlike shall be treated alike and treating unequal as equal is discriminatory. She also relied upon the case of Venkateshwara Theatre —Vs— State of A.P. reported in (1993) 3 SCC 67. Mrs. Borah also cited the case of D.K.Yadav —Vs— J.M.A. Industries wherein it was held that action or decision even administrative in nature which involves civil consequences must be just, fair, reasonable, non-arbitrary and in consequence with the principle of Natural Justice.

17. From the decision of the Hon'ble Supreme Court as mentioned above, it has been made clear that the Rules of procedure is required to be withstand the test of Article 14 of the Constitution.

18. In the instant case the Rules of seniority and fixation of number of post of Master Crafts Man (Senior Technician) as well as the promotion prescribed of the Artisan including the Turner and on the basis of percentage of Grade-1 Artisan and not existing prescribed percentage of Artisan the senior most Artisan and Machinist Trade and Turner are equal and are entitled to promotion to the post of Master Crafts Man whenever two posts are created but the facts and circumstances shows that three posts of Master Crafts Man were created but the workman was not considered for promotion.

19. From my above discussion and having heard both the sides and taking into consideration the decisions of the Hon'ble Supreme Court as mentioned above, it can safely be held that the Management has failed to implement the procedure for restructuring of the post in the event of re-deployment of the workman in Carriage and Wagon Department of Lumding Division, N.F. Railway, and they were given the status of Supernumerary post holders by creating special supernumerary post for them; while the management ignoring the restructuring formula and other guidelines issued by the Railway Board from time to time,

as discussed above, promoted the man from Machinist Grade to the post of Master Crafts Man (senior technician). Such an act was done by the Management in violation of the provision of Article 14 of the Constitution as well as the principle of Natural Justice as well as the Rules and guidelines of the Railway Board causing grave irregularities and injustice to the workman. As such, I am of the opinion that the workman Subhash Banik would have been promoted as Master Crafts Man (senior technician) with effect from 1.1.2006.

20. In the result, the issue involve in this Reference is decided in negative and hence, the workman is entitled to the relief as prayed for.

ORDER

The Reference is allowed on contest in favour of the workman with observation that the workman Subhash Banik is entitled to promotion to the post of Master Crafts Man (senior technician) with effect from 1.1.2006 with all benefit in respect of his Pay and Allowances including pensionary benefit.

Send the Award to the Government as per procedure.

Given under my hand and seal of this Court on this 20th day of March, 2013 at Guwahati.

L. C. Dey, Presiding Officer

नई दिल्ली, 24 जुलाई, 2013

का०आ० 1757.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे प्रबंध तंत्र के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, मुम्बई के पंचाट (संदर्भ संख्या 8/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.07.2013 को प्राप्त हुआ था।

[सं० एल-41012/78/2006-आईआर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 24th July, 2013

S.O. 1757.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 8/2007) of the Central Government Tribunal-cum-Labour Court, Mumbai as shown in the Annexure, in the industrial dispute between the management of Central Railway, Mumbai Division, and their workmen, received by the Central Government on 22.07.2013.

[No. L-41012/78/2006-IR (B-I)]
SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO.2, MUMBAI****PRESENT:** K.B. KATAKE, Presiding Officer**REFERENCE NO. CGIT-2/8 of 2007****EMPLOYERS IN RELATION TO THE
MANAGEMENT OF CENTRAL RAILWAY**

The Divisional Railway Manager (P)
Central Railway, Mumbai Division
Mumbai CST
Mumbai-400 001.

AND**THEIR WORKMEN**

Shri Raj Kumar Yadav
C/o. Shri Ravi Talreja
1st Floor, Phulwadi, Plot No. 16
Near Shai Saran Apartment on Dev Samaj Road,
Ulhasnagar-421 004.

APPEARANCES:

FOR THE EMPLOYER : Mrs. Pooja Kulkarni,
Advocate.

FOR THE WORKMEN : Mr. K.B. Talreja,
Advocate.

Mumbai, dated the 15th February, 2013.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-41012/78/2006-IR (B-I), dated 08.02.2007 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the Central Railway Administration, Mumbai Division, Mumbai by illegal terminating the services of Shri Raj Kumar Yadav w.e.f. 29.09.2005 is justified? If not, what relief the workmen, Shri Raj Kumar Yadav is entitled to?"

2. After receipt of the reference, both the parties were served with notices. In response to the notice the second party workman filed his statement of claim at Ex-4. According to him he was appointed by the first party as Bungalow Peon at the bungalow of Shri S.N. Singh, Additional Divisional Officer, Solapur. Mr. Singh was promoted as a Chief Project Manager to Wadi Bunder, looking into the sincere and honest work of the workman, Mr. Singh got him transferred to Wadi Bunder. Workman

was in the Grade os Sub Bungalow Peon. His pay was Rs. 2550-3200. He was residing at the bungalow of Mr. Singh and was issued with free residential card pass to travel from Sandhurst Road to Kalyan for marketing and other purchases. He was also given facility of free medical examination and treatment.

3. As he was working at the bungalow of the officer, he was not allowed to sign the muster roll kept in the office. His presence was marked as per the whim of his boss. As he was Bungalow Peon he was not subject to transfer from one division to another. When Mr. Singh was transferred from Solapur to Mumbai Division and the workman was taken to Mumbai neither he was accepted by Mumbai Division nor he was retained by Solapur Division and was marked absent. In fact he was working regularly. By showing him absent the first party terminated his service w.e.f. 15.6.2005. Without any inquiry and hearing, his services were terminated. Therefore he prays that he be reinstated with full back wages.

4. The first party resisted the statement of claim vide its written statement at Ex-6. According to them, the reference is not maintainable as before filing the reference the workman had filed O.A. No. 634/2005 before CAT. Therefore the reference is not tenable. Similar allegations were rejected by the Hon'ble Bombay High Court in Writ Petition no. 2378/2004 by its order dt. 11/10/2004. Therefore this reference deserves to be rejected. The reference is frivolous, mischievous and not tenable in the eye of law. According to them, the workman was appointed as a Bungalow Peon w.e.f. 17/11/2003. His appointment was on purely temporary basis and was liable to be terminated at any time without assigning any reason. On his own request he was transferred from Solapur Division to Mumbai Division. He remained absent continuously for 75 days. Therefore notice dt. 12/08.2005 was served to him and he was directed to join the duties within 7 days. In spite of service of notice, he did not join the duty. His service was temporary, thus the same was liable to be terminated without assigning any reason. Therefore as he was absent his services were terminated. An amount of Rs. 6025 was sent to him alongwith termination letter. The workman has no right to claim any relief. Therefore management prays that, the reference be dismissed with cost. The workman also filed rejoinder at Ex-7 and denied the contents in the written statement and reiterated his case in the statement of claim.

5. Following are the issue for my dertermination. I record my findings thereon for the reasons to follow:

Issues	Findings
1. Whether the termination of services of workman is legal and proper?	No.
2. If not, whether the workman is entitled to be reinstated with full back wages?	Partly yes.

3. What relief the workman is entitled to? As per final order

REASONS

Issues nos. 1 & 2:—

6. The fact is not disputed that the second party workman was appointed as a substitute Bungalow Peon since 17.11.2003. The fact is also not disputed that his services were terminated since 29.09.2005. According to the workman neither he was charge-sheeted nor any inquiry was conducted against him and his services were terminated without giving him any opportunity to defend himself. Therefore according to the workman his termination from service is illegal.

7. In this respect the Ld. adv. for the first party submitted that the workman was appointed purely on temporary basis as a substitute Bungalow Peon. It was mentioned in the appointment letter that his services can be terminated at any time without assigning any reason. According to him the workman remained absent, therefore, he was served with a letter dated 12.8.2005 and he was asked to resume his duties within 7 days. In spite of service of this warning letter, the workman remained absent. Therefore the management terminated his services *w.e.f.* 29/09/2005. According to the management along with the termination letter they have also paid one month's pay to the workman as required in case of retrenchment. According to the first party the termination of services of the second party is not retrenchment. It is further submitted that as second party was not their regular employee, it was not necessary to initiate departmental inquiry against him. Therefore according to the first party, the termination of his services is legal and proper and the second party has no right to challenge the same.

8. In this respect the Ld. adv. for the second party referred to the master circular no. 12/91 in respect of the substitutes employees. In this circular 'substitute employees' are defined as:

"Persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts falling vacant because of absence on leave or otherwise of permanent or temporary Railway Servant and which cannot be kept vacant."

9. In the light of this definition the Ld. adv. for the second party submitted that the substitute Bungalow Peon was appointed as the post of Bungalow Peon was vacant. Neither he was surplus nor he was appointed as an additional employee. He also submitted that it is also not the case of the first party that the second party was a surplus therefore he was retrenched. Therefore it is clear that, question of retrenchment does not arise. Therefore though they have paid one month's pay the case does not fall in the purview of retrenchment.

10. In this respect I would like to point out that fact is not disputed that the workman was appointed as a substitute Bungalow Peon since 17/11/2003. Fact is not disputed that the workman was in service and has performed his duties continuously till June 2005. From the calculation it is clear that the workman was worked more than 240 days continuously in a calendar year 2004-2005. Therefore he was entitled to the protection u/s 25-F the I.D. Act and also entitled for regularisation in service as a permanent employee. In this respect Ld. adv. for the first party has referred to the Apex Court ruling of Uma Devi wherein the Apex Court held that back door entry cannot be allowed. Therefore persons recruited by contractor or otherwise than recruitment procedure cannot be made permanent or cannot be regularised in service. In the case at hand the workman herein was not recruited through contractor. He was recruited by the first party and was working as a substitute Bungalow Peon. No doubt he was appointed on temporary basis. However after completion of period of 240 days continuous service in a calendar year as per rule he was entitled to the protection u/s 25(f) of I.D. Act and was entitled to be considered for the permanent post. At least his services cannot be terminated abruptly and arbitrarily without giving him any opportunity to defend himself.

11. In this respect the Ld. adv. for the second party further submitted that, the workman being a bungalow Peon he was not attending the office and his presence was marked by the concerned clerk as per the instructions of the officer. He has never signed the muster roll. In this respect the Ld. adv. for the first party submitted that the workman himself has admitted in his cross at Ex-12 that, he did not perform duties from 15/6/2005 to 29/9/2005. He also admitted that he received the letter dt. 12/8/2005. In this respect Ld. adv. for the second party submitted that the workman has further stated that though he has not replied the letter he had been there personally and they refused to allow him to work.

12. Looking into the facts and circumstances of the case I am of the opinion that, though the workman was appointed as temporary, as he has completed 240 days continuous service in a calendar year, it was not just and proper to terminate his service without any inquiry as he has become entitled for the permanent post. In this backdrop I hold that the termination of services of the second party cannot be said legal and proper. Thus I hold that the second party is entitled to be reinstated.

13. In respect of back wages the Ld. adv. for the first party submitted that, since the date of termination the workman must have worked elsewhere to maintain himself. She further submitted that law on the point is well settled that, 'no work no wages'. Therefore she submitted that the workman is not entitled to any back wages. As against this the Ld. adv. for the first party submitted that the services of the workman were terminated illegally. Therefore he

sustained heavy monetary loss as well as mental stress and agony. The workman is unemployed. Therefore it is submitted that the workman is entitled to full back wages. After giving conscious thought to the arguments of both parties, I would like to point out that the workman has not performed any duty of the first party. Therefore granting full backwages would be unjust and unnecessary burden on the first party. At the same time I would also like to point out that, the workman is a poor person working as a sub bungalow peon. He must have suffered a lot for want of job. In these circumstances and to meet the ends of justice I think it proper to grant 50% back wages to the second party workman. Accordingly I decide this issue no. 1 in the negative that, the termination is not legal and proper. Consequently I decide this issue no. 2 partly in the affirmative *i.e.* the workman is entitled to be reinstated with 50% back wages. The issue no. 3 is also decided accordingly. Thus I partly allow the reference and proceed to pass the following order:

ORDER

- (i) The reference is partly allowed with no order as to cost.
- (ii) The first party is directed to reinstate the second party workman with 50% back wages with continuity of service.

Date: 15.02.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 24 जुलाई, 2013

का०आ० 1758.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ बिकानेर एण्ड जयपुर के प्रबंधन के संबद्ध नियोजको और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट (संदर्भ संख्या 11/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-07-2013 को प्राप्त हुआ था।

[सं० एल-12012/172/2007-आईआर(बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 24th July, 2013

S.O. 1758.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 11/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jaipur as shown in the Annexure, in the industrial dispute between the management of State Bank of Bikaner & Jaipur and their workmen, received by the Central Government on 22/07/2013.

[No. L-12012/172/2007-IR(B-I)]
SUMATI SAKLANI, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर
सी.जी.आई.टी प्रकरण सं. 11/2008

श्री एन०के० पुरोहित, पीठासीन अधिकारी

रेफरेन्स नं० L-12012/172/2007-IR(B-I) दिनांक 09.01.2008

Sh. Om Prakash

S/o Sh. Tundaram Kumhar,

R/o Hodachbaria, Pada,

Town: Badi, Distt.-Dholpur (Rajasthan)

V/s

The General Manager,

State Bank of Bikaner & Jaipur,

Head Office, Post Box No. 154,

Tilak Marg, Jaipur (Rajasthan)

प्रार्थी की तरफ से : श्री बी०एल० गुप्ता

अप्रार्थी की तरफ से : श्री आर०के० जैन

पंचाट

दिनांक 27.02.2013

1. केन्द्रीय सरकार के द्वारा निम्न विवाद औद्योगिक विवाद अधिनियम 1947 की धारा 10 की उपधारा के खण्ड (घ) के प्रावधानों के अंतर्गत उक्त आदेश दिनांक 02.08.2005 के द्वारा न्यायनिर्णयन हेतु प्रेषित किया गया था।

"Whether the disputant Sh. Om Prakash S/o Sh. Tundaram Kumhar has worked in the State Bank of Bikaner & Jaipur since 1994 to 28.05.2007? If yes, then the termination of services of the workman w.e.f 28.05.2007, is fair, legal and justified? If not, what relief the workman is entitled to?"

2. प्रार्थी के स्टेटमेंट ऑफ क्लेम में यह अभिवचन है कि उसकी नियुक्ति अप्रार्थी के अधीन बैंक की बाड़ी ब्रांच में वर्ष 1994 में चतुर्थ श्रेणी कर्मचारी के पद पर हुई थी तथा उससे पानी भरवाने, पिलाने एवं कार्यालय समय से पूर्व सफाई का कार्य अपनी देखरेख में करवाने तथा चतुर्थ श्रेणी के रूप में सम्पादनीय कार्य करवाये जाते थे। पूर्व में 300 रुपये प्रतिमाह दिए जाते थे बाद में उस राशि को बढ़ाकर 400 रुपये प्रतिमाह कर दिया गया। प्रार्थी ने जब उसकी राशि बढ़ाकर 750 रुपये प्रतिमाह करने को कहा तो उसे दिनांक 28.05.2007 को सेवा से हटा दिया गया। प्रार्थी के यह भी अभिवचन है कि उसने अप्रार्थी के यहां लगभग 13 वर्ष कार्य किया तथा 240 दिन से अधिक कार्य किया है उसके उपरान्त औद्योगिक विवाद अधिनियम की धारा 25 F के आज्ञापक प्रावधानों की पालना किए बिना हटा दिया गया है। अप्रार्थी ने कोई वरिष्ठता सूची जारी नहीं की तथा उसे पुनः सेवा में लेने का अवसर भी

प्रदान नहीं किया। अतः प्रार्थी को दिनांक 28.05.2007 को सेवा से हटाने के कृत्य को अवैध एवं शून्य घोषित कर समस्त सेवा लाभों सहित पुनः सेवा में बहाल किया जाए।

3. अप्रार्थी के जवाब में प्राक्कथन है कि प्रार्थी अप्रार्थी के नियोजन में नहीं रहा। उसे सिर्फ आवश्यकतानुसार पानी लाने व भरने के कार्य हेतु रखा जाता था। कभी-कभी आवश्यकतानुसार सफाई का कार्य लिया जाता था व उक्त कार्य के लिए जरिए वाउचर, भुगतान किया जाता था। प्रार्थी ने किसी भी वर्ष में 240 दिन कार्य नहीं किया उसके कार्य का कोई निर्धारित समय नहीं था तथा कार्य स्थायी प्रकृति का नहीं था। जवाब में यह भी कहा है कि अप्रार्थी की सेवा समाप्त नहीं की गई थी बल्कि स्वयं ही दिनांक 28.5.2007 के पश्चात् कार्य पर नहीं आया।

4. प्रार्थी ने अपनी साक्ष्य में स्वयं का शपथ-पत्र एवं दस्तावेजात प्रदर्श W-1 से प्रदर्श W-13 प्रस्तुत किए हैं। उक्त साक्ष्य के खण्डन में अप्रार्थी की तरफ से श्री बाबूलाल मीणा का शपथ-पत्र प्रस्तुत किया है।

5. उभयपक्ष के विद्वान प्रतिनिधिगण को सुना गया। पत्रावली का अवलोकन किया।

6. दोनों पक्ष के अभिवचनों को दृष्टिगत रखते हुए विचारणीय बिन्दु निम्न है:-

- (i) क्या प्रार्थी अप्रार्थी के अधीन चतुर्थ श्रेणी कर्मचारी के रूप में वर्ष 1994 से दिनांक 28.5.2007 तक निरन्तर कार्यरत रहा है तथा उसे अप्रार्थी द्वारा दिनांक 28.5.2007 को अधिनियम की धारा 25 F के प्रावधानों की पालना किए बिना सेवा से हटा दिया गया?
- (ii) क्या प्रार्थी को सेवा से हटाने के पश्चात् प्रार्थी को पुनः नियोजन का अवसर दिए बिना किसी अन्य को नियोजन देकर अप्रार्थी ने धारा 25 (H) के प्रावधानों का उल्लंघन किया है?
- (iii) क्या प्रार्थी कोई अनुतोष प्राप्त करने का अधिकारी है?

बिन्दु संख्या 1

7. औद्योगिक विवाद अधिनियम 1947 की धारा 25 F के प्रावधानों के अनुसार जब किसी उद्योग में नियोजित किसी श्रमिक की, जो नियोजक के अधीन कम से कम एक वर्ष के लिए निरन्तर सेवा में रह चुका है, छंटनी तब ही की जा सकती है जब उपखण्ड क के अन्तर्गत लिखित सूचना दे दी गई हो या सूचना के बदले में सूचना की कालावधि के लिए मजदूरी दे दी गई हो तथा उपखण्ड (ख) में बताए अनुसार प्रतिकर दे दिया गया हो।

8. अधिनियम की धारा 25 B में 'निरंतर सेवा' को परिभाषित किया गया है। जिसके उपखण्ड (1) के अनुसार श्रमिक एक वर्ष की कालावधि में अविच्छिन्न सेवा में रहा हो या उपखण्ड (2) के अनुसार यदि उसने उस तारीख से, जिसके प्रति निर्देश से गणना की जानी है, पूर्व के बारह कैलेण्डर मास की कालावधि के दौरान कम से कम 240 दिन वास्तव में काम किया हो।

9. यह सिद्ध करने का प्रारंभिक भार प्रार्थी पर था कि उसने निरन्तर एक वर्ष की कालावधि में कार्य किया है या उसे सेवा से पृथक्

करने की पूर्ववर्ती बारह माह में 240 दिन या उससे अधिक कार्य किया है।

10. प्रार्थी का कथन है कि वर्ष 1994 से दिनांक 28.05.2007 की अवधि में अप्रार्थी के यहां पानी लाने, भरने व चतुर्थ श्रेणी कर्मचारी द्वारा सम्पादनीय कार्यों का निष्पादन किया है तथा प्रत्येक वर्ष में 240 दिन कार्य किया है। उसका यह भी कथन है कि प्रारम्भ में उसे उक्त कार्य के लिए 300 रुपये प्रतिमाह दिए जाते थे बाद में उस राशि को बढ़ाकर 400 रुपये प्रतिमाह कर दिया जब राशि को बढ़ाकर 750 रुपये प्रतिमाह की मांग की तो उसी दिनांक 28.05.2007 को उसकी सेवा समाप्त कर दी। प्रतिपरीक्षा में कहा है कि उसके द्वारा किए गए कार्य के सम्बन्ध में बिल देने पर भुगतान वाउचर से किया जाता था।

11. प्रार्थी ने अपने कथन के समर्थन में दस्तावेजात प्रदर्श W-1 से प्रदर्श W-13 प्रस्तुत किए हैं। प्रदर्श W-2 प्रार्थी द्वारा उसे देय राशि को बढ़ाने के सम्बन्ध में प्रबन्धक को प्रेषित पत्र की प्रतिलिपि है तथा प्रदर्श W-1 में उक्त पत्र का उल्लेख करते हुए प्रबन्धक ने सहायक महाप्रबन्धक को प्रार्थी की राशि 750 रुपये प्रतिमाह करने की स्वीकृति प्रदान करने का अनुरोध किया है। प्रदर्श W-3 नोटिशिट की प्रतिलिपि है तथा प्रदर्श W-4 मेजरनामा की प्रतिलिपि है। प्रदर्श W-5 अधिवक्ता के जरिए राशि बढ़ाने हेतु दिए गए विधिक नोटिस की प्रति है। प्रदर्श W-6 सहायक श्रम आयुक्त कोटा की वार्ता विफल रहने की रिपोर्ट है एवं प्रदर्श W-7 रेफरेन्स आदेश है। प्रदर्श W-8 एवं प्रदर्श W-9 क्रमशः श्री पुरण चन्द एवं श्री शिबों के शपथ-पत्र हैं प्रदर्श W-10 कॉफी लाने से सम्बन्धित हिसाब का विवरण है। उसके अलावा दो प्रमाण-पत्र भी प्रस्तुत किए हैं। प्रमाण-पत्र प्रदर्श W-11 उप-कोषाधिकारी, बाड़ी, (धोलपुर) का है, जिसमें कहा गया है कि प्रार्थी डेली कलेक्शन देने कार्यालय में आता था। प्रमाण-पत्र प्रदर्श W-13 सेन्ट्रल कॉर्पोरेटिव बैंक के ब्रान्च मैनेजर द्वारा दिया गया है। जिसमें कहा गया है कि प्रार्थी 'डेली क्लियरिंग' हेतु 10-12 साल से आता था।

12. उक्त साक्ष्य के खण्डन में अप्रार्थी साक्षी बाबूलाल मीणा का कथन है कि प्रार्थी को कोई नियुक्ति पत्र नहीं दिया गया। उसके द्वारा आवश्यकतानुसार पानी लाने व भरने का कार्य किया जाता था। कभी-कभी आवश्यकतानुसार बैंक में जाले उतारने व अन्य सफाई का कार्य किया जाता था तथा वाउचर्स के जरिए भुगतान किया जाता था।

13. विद्वान प्रतिनिधि प्रार्थी का तर्क है कि प्रार्थी की स्वयं की साक्ष्य एवं उसके समर्थन में प्रस्तुत प्रलेखीय साक्ष्य से यह साबित है कि प्रार्थी वर्ष 1994 से दिनांक 28.5.2007 तक अप्रार्थी के यहां कार्यरत रहा है। अप्रार्थी द्वारा यह स्वीकृत तथ्य है कि प्रार्थी से पानी भरवाने व सफाई के कार्यों का निष्पादन करवाया जाता था। प्रबन्धक द्वारा प्रेषित पत्र प्रदर्श W-2 एक स्वीकृत दस्तावेज है। इससे इस तथ्य की पुष्टि होती है कि प्रार्थी 12 वर्षों से निरन्तर पानी पिलाने, सफाई करने आदि कार्य करता आ रहा था। इसके अलावा अप्रार्थी के द्वारा जो वाउचर्स व दस्तावेज पेश किए गए हैं, उनसे भी इस बात की पुष्टि होती है कि दिनांक 28.5.2007 से पूर्ववर्ती 12 माह की अवधि में प्रार्थी ने 240 दिन से भी अधिक दिन कार्य किया है। अप्रार्थी द्वारा यह स्वीकृत तथ्य है कि प्रार्थी को कोई नोटिस या प्रतिकर नहीं दिया गया था। अतः अप्रार्थी द्वारा प्रार्थी को

दिनांक 28/05/2007 को सेवा से हटाया जाने का कृत्य अधिनियम की धारा 25 (F) की पालना न करने के कारण अवैध एवं अनुचित है। अपने तर्कों के समर्थन में उन्होंने 2011(6)S.C.C. 584 एवं 2012 W.L.C.(Raj.), U.C. 663 के न्याय-दृष्टान्तों को प्रस्तुत किया है।

14. उक्त तर्कों के विरोध में विद्वान प्रतिनिधि अप्रार्थी का कहना है कि प्रार्थी को आवश्यकतानुसार पानी लाने व भरने हेतु रखा जाता था, लेकिन उसने किसी वर्ष में 240 दिन कार्य नहीं किया। प्रार्थी ने ऐसी कोई प्रलेखीय साक्ष्य पेश नहीं की है जिससे यह साबित होता हो कि वर्ष 1994 से दिनांक 28/05/2007 तक निरन्तर कार्य किया हो। श्री पुरणचन्द्र एवं श्री शिबों के शपथ-पत्र साक्ष्य में पेश किये हैं, लेकिन उन्हें स्वयं को साक्ष्य में पेश नहीं किया है तथा प्रार्थी ने प्रतिपरीक्षा में स्वीकार किया है कि ये दोनों ही बैंक में कार्य नहीं करते थे। इसके अलावा प्रार्थी ने जिन दस्तावेज को पेश किया है उन्हें साबित नहीं किया है। उनका यह भी तर्क रहा है कि अप्रार्थी साक्षी के कथन से यह साबित है कि प्रार्थी को सेवा से हटाया नहीं गया था, बल्कि वह स्वयं ही दिनांक 28/05/2007 के बाद कार्य पर उपस्थित नहीं रहा। अतः प्रार्थी के मामले में धारा 25(F) के प्रावधान लागू नहीं होते। अप्रार्थी प्रतिनिधि ने अपने तर्कों के समर्थन में 2012 LAB I.C. 2940(Bom.), 2007(15) SCC, 680(S.C.), 2010 LLR 39 (P.&H), 2006 LLR 947(S.C.), 2010 LLR 647(S.C.) & 2012(4) W.L.C. 452 (Raj) के न्याय-दृष्टान्तों को पेश किया है।

15. मैंने उक्त तर्कों तथा उभयपक्ष द्वारा प्रस्तुत न्यायदृष्टान्तों में प्रतिपादित सिद्धांतों पर मनन किया।

16. अप्रार्थी के द्वारा इन तथ्यों को स्वीकार किया गया है कि पानी भरने, व सफाई के कार्य के लिए प्रार्थी की सेवाएं ली जाती थी तथा वाउचर से भुगतान किया जाता था। अप्रार्थी साक्षी श्री बाबुलाल मीणा ने प्रार्थी द्वारा प्रस्तुत दस्तावेज पत्र दिनांक 08/05/2006 प्रदर्श W-I को स्वीकार किया है जो प्रबंधन द्वारा सहायक महा प्रबंधक को लिखा गया था। उक्त पत्र में यह अंकित है कि प्रार्थी पिछले 12 सालों से पानी भरने का कार्य करता आ रहा है जिसके लिए उसको 300 रुपये प्रतिमाह दिए जा रहे हैं। इसमें प्रार्थी को देय राशि को बढ़ाकर 750 रुपये प्रतिमाह करने की स्वीकृति भी चाही है। इस प्रकार दिनांक 08/05/2006 को 12 वर्ष से प्रार्थी द्वारा कार्य करना एक स्वीकृत तथ्य है।

17. अप्रार्थी के द्वारा भुगतान से संबंधित फरवरी 2006 से मई 2007 के मध्य दिए गए प्रार्थना-पत्र व उसको दिए गए भुगतान से संबंधित वाउचर्स की छाया प्रतियां पेश की हैं जो सभी स्वीकृत दस्तावेज हैं। इनके अवलोकन से यह उजागर होता है कि मई 2006 से मई 2007 की अवधि में प्रार्थी अप्रार्थी के यहां पानी भरने के कार्य हेतु कार्यरत रहा है तथा दैनिक वेतन के रूप में 400 रुपये प्रतिमाह का भुगतान मई 2006 से अप्रैल 2006 की कालावधि में किया गया है। इनसे यह भी उजागर होता है कि उसे सेवा से हटाए जाने की तिथि 28.05.2007 के पूर्ववर्ती 12 माह की अवधि में प्रार्थी ने 240 दिवसों से अधिक दिवसों पर कार्य किया है तथा उसे भुगतान जरिये वाउचर्स किया गया है।

18. अप्रार्थी साक्षी श्री बाबुलाल मीणा ने प्रतिपरीक्षा में कहा है कि प्रार्थी की सेवाएं समाप्त नहीं की गई, बल्कि प्रार्थी स्वयं ही दिनांक 28/05/2007 के पश्चात कार्य करने नहीं आया। इसके कथन से प्रार्थी

के इस कथन की पुष्टि होती है कि वह दिनांक 28/05/2007 तक कार्यरत था। प्रार्थी के द्वारा दिनांक 23/05/2007 को राशि बढ़ाए जाने हेतु विधिक नोटिस दिया जाना व दिनांक 28/05/2007 के बाद दिनांक 17/08/2007 को ही सहायक श्रम आयुक्त के समक्ष विवाद उठाना यह दर्शाता है कि प्रार्थी ने स्वयं दिनांक 28/05/2007 के बाद कार्यालय आना बंद नहीं किया था, बल्कि उसे उक्त तिथि को सेवा से हटाया गया है। अप्रार्थी का यह कथन विश्वास किए जाने योग्य नहीं है कि प्रार्थी स्वयं ही दिनांक 28/05/2007 के बाद कार्य पर नहीं आया।

19. उपरोक्त विवेचन के आधार यही निष्कर्ष निकलता है कि अप्रार्थी ने प्रार्थी को दिनांक 28/05/2007 को सेवा से पृथक किया तथा पृथक करने की तिथि से पूर्ववर्ती 12 माह में प्रार्थी ने 240 दिन अप्रार्थी के अधीन दैनिक वेतन भोगी श्रमिक के रूप में कार्य किया है। अप्रार्थी द्वारा प्रार्थी को सेवा से हटाने के संबंध में नोटिस, नोटिस की एवज में वेतन व प्रतिकर, न देना स्वीकृत तथ्य है। इसलिए यह साबित है कि प्रार्थी को धारा 25(F) के आज्ञापक प्रावधानों की पालना किए बिना सेवा से हटाया गया है।

बिंदु संख्या 2

20. प्रार्थी का कथन है कि उसे सेवा से पृथक करने के पश्चात उसे नियोजन का अवसर दिए बिना, अन्य को नियुक्ति दे दी है तथा उससे उसकी जगह काम लिया जा रहा है। प्रार्थी ने अपने स्टेटमेंट ऑफ क्लेम एवं कथन में यह नहीं बताया है कि उसे सेवा से पृथक किए जाने के बाद किस व्यक्ति को उसके स्थान पर रखा गया है। प्रार्थी ने कथन में कहा है कि पुनः सेवा हेतु लिखित में प्रतिवेदन दिया था लेकिन ऐसे प्रतिवेदन की कोई प्रति पेश नहीं की है। प्रार्थी के द्वारा जो दस्तावेज प्रस्तुत किए गए हैं, उनमें से कोई भी दस्तावेज उसके स्थान पर अन्य को सेवा में लेने के संबंध में नहीं हैं। प्रार्थी यह साबित करने में असफल रहा है कि अधिनियम की धारा 25(H) के प्रावधानों का उल्लंघन करते हुए अप्रार्थी ने उसके स्थान पर किसी अन्य व्यक्ति को नियोजित कर लिया। अतः यह बिन्दु प्रार्थी के विरुद्ध तय किया जाता है।

बिंदु संख्या 3

21. बिंदु संख्या 1 के संबंध हम इस निष्कर्ष पर पहुंच चुके हैं कि अप्रार्थी ने प्रार्थी को सेवा से पृथक करने से पूर्व अधिनियम की धारा 25F के आज्ञापक प्रावधानों की पालना नहीं की है। अतः प्रार्थी का उक्त कृत्य अनुचित एवं अवैध है।

22. यह कानूनी स्थिति विवादित नहीं है कि धारा 25F के अंतर्गत प्रावधानों की पालना न होने की स्थिति में श्रमिक को पुनः सेवा से अन्य लाभों के साथ बहाल करने का अनुतोष प्रदान किया जा सकता है।

23. पूर्व में धारा 25F के प्रावधानों का उल्लंघन करते हुए सेवा से हटाने के मामलों में सेवा में पुनः बहाल करने के आदेश ही पारित किए जाते रहे हैं लेकिन माननीय सर्वोच्च न्यायालय के हाल ही के कुछ वर्षों के निर्णयों में दैनिक वेतन भोगी, जो कि कोई पद पर नहीं है तथा स्थाई कर्मचारी के मामलों में अनुतोष प्रदान करने के संबंध में प्रमेद किया है। माननीय सर्वोच्च न्यायालय ने (2010) 1 S.C.C. (L & S) 545

के न्यायदृष्टान्त में पूर्व में दिए गए निर्णयों पर विचार करते हुए यह अभिनर्धारित किया है कि:-

"It would be, thus seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wages has not been found to be proper by this Court and instead compensation has been awarded. This court has distinguished between a daily wagger who does not hold a post and a permanent employee."

24. इसी दृष्टिकोण को (2010) 2 S.C.C. (L & S) 87 में जारी रखते हुए प्रतिपादित किया है कि:-

"While the earlier view of the Court was that if an order of termination was found to be illegal, normally the relief to be granted would be reinstatement with full back wages. However, with the passage of time it came to be realized that an industry should not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all. The relief to be granted is discretionary and not automatic. A person is not entitled to get something only because it would be lawful to do so. The changes brought out by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing was evident. Hence now there is no such principle that for an illegal termination of service the normal rule is reinstatement with back wages, and instead the Labour Court can award compensation."

"There has been a shift in the legal position laid down by the Supreme Court and now there is no hard and fast principle that on the termination of service being found to be illegal reinstatement with back wages is to be awarded. Compensation can be awarded instead, at the discretion of the Labour Court, depending on the facts and circumstances of the case."

25. 2012(44) WLC Raj 452 में भी माननीय राज उच्च न्यायालय ने यह प्रतिपादित किया है कि यदि सेवाओं का पर्यवसान अधिनियम की धारा 25F पर अतिक्रामी हो तो भी, यदि प्रतिकर से न्याय की तुष्टि हो रही

हो तो गत वेतन सहित पुनः स्थापन का अधिनिर्णय स्वयमेव पारित नहीं किया जा सकता।

26. वर्तमान मामले में प्राथी दैनिक वेतन-भोगी के रूप में कार्यरत था। वह कोई नियमित पद पर, पद स्थापित नहीं था। उसे माह में दैनिक-वेतन के रूप में मिलने वाली राशि, कार्य की प्रकृति, सेवा से हटाने के बाद की अवधि एवं अन्य सभी तथ्यों एवं परिस्थितियों पर विचार करने के बाद यही न्यायोचित प्रतीत होता है कि प्राथी को सेवा में पुनः स्थापन करने का अनुतोष प्रदान करने की बजाय प्रतिकर दिये जाने से न्याय की तुष्टि हो जावेगी। अतः प्राथी अप्राथी से प्रतिकर राशि ही प्राप्त करने का अधिकारी है।

27. इस प्रकार यह तय किया जाता है कि प्राथी को अधिनियम की धारा 25 (F) के आज्ञापक प्रावधानों की पालना किये बिना सेवा से हटाया गया है, इसलिए अप्राथी द्वारा प्राथी को दिनांक 28.05.2007 को सेवा से हटाने का कृत्य अनुचित एवं अवैध था। परिणामस्वरूप प्राथी को प्रतिकर के रूप में 30,000 रुपये (अक्षरे तीस हजार रुपये) की राशि सेवा में पुनः स्थापन की जगह अप्राथी से प्राप्त करने का अधिकारी है। उक्त राशि का भुगतान पंचाट के प्रकाशन के 8 सप्ताह के भीतर न करने पर प्राथी उक्त राशि पर 9% सालाना की दर से ब्याज प्राप्त करने का अधिकारी होगा। न्यायनिर्णयन हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तदनुसार पारित किया जाता है।

एन० के० पुरोहित, पीठासीन अधिकारी

नई दिल्ली, 24 जुलाई, 2013

का०आ० 1759.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 108/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.07.2013 को प्राप्त हुआ था।

[सं० एल-12012/118/98-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 24th July, 2013

S.O. 1759.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (1947), the Central Government hereby publishes the Award (Ref.108/2011) of the Cent.Govt.Indus.Tribunal No.1, Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 19/07/2013.

[No. L-12012/118/98-IR(B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX,
DELHI**

I.D. No. 108/2011

The Circle President,
S.B.I. Staff Association,
(Regd. Affiliated to ALSBISF)
2124/2 Hari Singh Nalwa Street No. 58,
Karol Bagh, New Delhi-110005

.....Workman

Versus

The Dy. General Manager,
State Bank of India,
Zonal Office, 11,
Sansad Marg,
New Delhi-110001

....Management

AWARD

A water boy was engaged by GT Road, Shahdara, branch of State Bank of India (in short the Bank) in March 1988. His engagement remained for 72 days on intermittent period. He was engaged for 132 days in 1989, and for 84 days in 1990. In pursuance of Bipartite Settlements dated 27.10.1988 and 09.01.1991, circular was issued by the Bank on 06.04.1991, inviting applications from candidates, who were engaged temporarily by the Bank, for their appointment in substantive capacity as messenger.

2. The water boy, namely, Shri Ved Pal moved an application for his appointment in substantive capacity. He was called for interview on 05.06.1992 but found unsuitable for the job. His case was reviewed and he was again called for interview on 15.01.1994. At that time too, he was found unsuitable for the job. He approached State Bank of India Staff Association (hereinafter referred to as the Association) for redressal of his grievance. The Association raised a demand for appointment of the claimant on the post of messenger, which was not conceded to. Ultimately, the Association raised an industrial dispute before the Conciliation Officer. Since the Bank contested the claim, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No. L-12012/118/98-IR(B-I), New Delhi dated 06.01.1999, with following terms:

"Whether action of the management in not selecting the workman for absorption in bank service was justified under the Bipartite Settlement? If yes, to what relief the workman is entitled to?"

3. Claim statement was filed by Shri Ved Pal pleading that he was recruited by the Bank on 02.08.1998 in temporary

capacity. His service conditions were governed by the provisions of Sastry Award as modified by Desai Award and subsequent Bipartite Settlements from time to time. He worked for 72 days in 1988, 132 days in 1990 and 84 days in 1991. His services were terminated with effect from 31.07.1991 without giving any notice.

4. The Bank, on the strength of Bipartite Settlements dated 27.10.1988 and 09.01.1991, entered into a settlement for absorption of daily wagers/temporary employees, who have worked for a minimum of 30 days during the period between 1975 to 1991 and fulfilled educational qualification and age criteria. Since he fulfilled the required criteria, he applied for absorption in the Bank as a messenger. His interview lasted for just a minute where he was asked to give his name, educational qualification and names of Branch Managers. However, his name did not figure in the list of the candidates selected for absorption in the service of the Bank. Candidates who were having lesser service than him were selected. No reasons were recorded for having denied him an opportunity for job. Thus, the act of the Bank was illegal, unjustified, discriminatory and violative of laws of equal protection and equal opportunities. He seeks absorption in the Bank with continuity of service and all consequential benefits.

5. Claim was demurred by the Bank pleading that the claimant was never recruited in the Bank through established recruitment system. The claimant was engaged in the Bank as contract labour on daily wages for filling water in coolers at Shahdara branch of the Bank. Shastri Award, as modified by Desai award, and subsequent Bipartite Settlements are not applicable to casual labour(s). Since there was no valid appointment, question of termination would not arise. When the Bank felt that there was no need to engage casual labour, the claimant was no more engaged.

6. Issuance of circular for calling of applications for absorption in service of the Bank, from amongst the daily wagers, who worked for a minimum period of 30 days during the period between 1975 to 1991 and fulfilled educational and age criteria, has not been disputed. It is pleaded that the claimant was interviewed for the post of messenger by the Selection Committee, consisting of very senior officials, duly constituted by the Bank. The Selection Committee was competent enough to judge suitability/unsuitability of a particular candidate. The Selection Committee had no malice towards the claimant. His candidature was found unsuitable for permanent absorption in the Bank. Hence, there is no question of discrimination. His claim statement, being bereft of merits, may be rejected.

7. Vide order No. Z-22019/6/2007-IR(C II), New Delhi dated 11.02.2008, the case was transferred to Central

Government Industrial Tribunal No. II, New Delhi, for adjudication by the appropriate Government. It was retransferred to this Tribunal for adjudication vide order No. L-12012/118/98-IR (B-I), New Delhi dated 30.03.2011 for adjudication by the appropriate Government.

8. Claimant has examined himself in support of his claim. Shri J.N. Kapoor, also entered the witness box to testify fact on behalf of the claimant. However, testimony of Shri Kapoor remained incomplete. He did not enter the witness box again and as such opportunity could not be given to the Bank to purify facts testified by him, by an ordeal of cross examination. Resultantly, testimony of Shri J.N. Kapoor cannot be read in evidence.

9. Claimant abstained from attending the proceedings with effect from 01.01.2013. He was proceed under Rule 22 of Industrial Disputes (Central) Rules 1957 *vide* order of the date. Evidence of the claimant was closed. Shri N.K. Kohli tendered his affidavit dated 01.01.2013 as evidence. Since the claimant abstained away from the proceedings no opportunity could be accorded to him to cross examine Shri Kohli.

10. Arguments were heard at the bar. Ms.Sadaf Naaz, authorized representative, advanced arguments on behalf of the Bank. None came forward to raise submissions on behalf of the claimant. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

11. The case hinges on a narrow point as to whether claimant fared well before the Selection Committee to be declared successful for his absorption as messenger in the Bank. In his affidavit Ex.WW2/A, tendered as evidence, he highlights that daily wagers who served for less period have been were absorbed in the service of the Bank while he was denied chance for appointment. He asserts that the action of the Bank violates his right of equal protection and equal opportunities. During the course of cross examination, he concedes that he was called for interview again and found unsuitable for the job. He disputes that his speech was incoherent during the interview. Contra to it, Shri N.K. Kohli details in his affidavit dated 01.01.2013 that the Selection Committee consisted of Chairman of the Bank and three members, who were senior officers. Cases of the candidates who were found unsuitable were reviewed by the Selection Committee on 15.01.1994. Claimant was found unsuitable in the interview dated 05.06.1992. He was again called for interview and found unsuitable for the post of messenger. He has relied on the result of the Selection Committee as Ex.MW1/1, wherein it has been mentioned that the claimant was unable to explain/speak smoothly. It has also been projected therein that his case was reviewed on 19.01.1994 and he was found unsuitable for messengerial post.

12. Bipartite Settlement dated 27.10.1988 projects that All India State Bank of India Staff Federation (in short the Federation) have represented to the Bank to consider

feasibility of giving a chance for permanent appointment to those of the persons who are engaged at branches/offices on casual basis against leave vacancies/casual vacancies of messengers, faraash, cash coolies, water boys and sweepers etc. and were paid ad hoc/fixed remuneration alongwith eligible categories of temporary employees in subordinate cadre. On consideration of the matter, it was decided to give such employee chance for permanent absorption in Bank's service. The Bank and the Federation again entered into another settlement dated 09.01.1991 in that regard. In pursuance of the aforesaid two settlements, eligibility criteria for such employees were decided to be as follows:

"Temporary service and period thereof

- (a) The following categories of daily wagers will only be eligible for a chance for being considered for permanent appointment:

Category A: those who have completed 240 days' temporary service in any continuous block of 12 calendar months or less during the period 01.07.1995 to 31.07.1966.

Category B: Those, who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months during the period 01.07.1995 to 31.07.1988.

Category C: Those who have completed a minimum of 30 days aggregate temporary service in any calendar year after 01.07.1995 or a minimum of 70 days aggregate temporary service in any continuous block of 36 calendar months during the period 01.07.1995 to 31.07.1988.

- (b) The aforesaid aggregate temporary service of 270 days, 240 days, 70 days of 30 days should have been put in by a daily wager at any one or more of the offices/branches falling within a module as existing/defined as on 31.07.1988. This concession is being given as a one time measure (and not to be treated as a precedent) in line with Clause 5 of the Agreement dated 17th November 1987 that each branch/office is to be treated as an establishment and temporary service put in at a branch/office alone will be reckoned for the purpose.
- (c) Candidates will be appointed in full time or part time positions, as per the Bank's need: they will be treated as new entrants and will not be entitled for any back wages or difference between the wages payable to regular temporary employees and ad hoc/fixed remuneration paid to them or any other attendant benefits: nor will they be entitled for any further chance for being considered for permanent appointment. Their appointment will be effective from the date they take up their permanent appointment."

13. Selection Committee was to be formed to conduct interview of eligible candidates and determine their suitability. Procedure to be followed by the said Selection Committee is extracted thus:

- (i) A Selection Committee will be formed for each recruitment zone to interview eligible candidates and determine their suitability or otherwise for permanent appointment in the Bank's service: selection will be purely on merits. Wherever the Committee does not find a candidate suitable, it is advisable to record very briefly the reasons for non-suitability on the interview sheet.
- (ii) Keeping in view the number of eligible candidates in a recruitment zone, if need is felt, more than one Interview Committee may release an advertisement in two leading dailies (one of which will be in the local language), advising eligible candidates to apply for permanent appointment on the prescribed format: a draft of the proposed advertisement in English and Hindi is to be released in all places simultaneously on the 1st of May, 1991: a copy thereof may also be displayed by branches on their notice board.

Note: Keeping in view the local position/circumstances, if any Local Head Office wants to make minor modification in the next of the advertisement, it may do so.

14. Selection Committee was required to prepare wait lists of the candidates found unsuitable for permanent appointment in the Bank. Wait list, required to be prepared, are as follows:

- "(a) Candidates found suitable for appointment as messengers with combined designation
- (b) Candidates found suitable for non-messengerial positions
- (c) Candidates found suitable for positions of bank guards
- (d) Candidates found suitable for appointment as sweepers."

15. While preparing the above panels, names of suitable candidates were to be waitlisted in order of their respective categories, viz. A, B and C referred to above. Further in each of these categories, names of candidates were to be given in the descending order according to length of temporary service put in by them. In other words, a candidate who has put in maximum aggregate temporary service during the period 01.07.1995 to 31.07.1988 was to be placed at the top in his category (A, B or C as the case may be), the candidate who is next to him in terms of length of service, will be placed in second position, and so on. If two or more candidates have put in equal length of temporary service, their position in the panel was to be

mentioned in alphabetical order of surname (or last part of the name, where there is no surname).

16. Details of the manner in which vacancies are to be projected were given in the circular, candidates empanelled there-against were to be waitlisted in the above manner. For this purpose, waiting lists should ordinarily have names equal to the number of vacancies projected for the year 1995 and 1996 plus 10% extra: this will take care of replacements to be provided against candidates, who may not join the Bank's service for any reason. Revised norms for messenger staff were to be taken into consideration for the limited purpose of projecting future vacancies, the actual vacancies were to be sanctioned as per the existing norms only.

17. Wait list/panels prepared were to be utilized in the following order:

- (i) Vacancies arising upto 1994 were to be filled from the panels of temporary employees (current upto 1994) in the following order:
 - (a) Panels prepared out of temporary employees who were interviewed on the basis of having completed 90 days' or more temporary service as at 31.10.1984.
 - (b) Panels prepared in pursuance of the Bipartite Settlement of 17.11.1987.
 - (c) Supplement panels prepared in pursuance of Bipartite Settlement of 09.01.1991.
- (ii) Vacancies arising in the year 1995 and 1996 were also to be filled from panels of daily wagers. However, if the aforesaid panels of temporary employees in a Circle exhausted before 31.12.1994, the panels of daily wagers were to become operative.

18. As projected above, when the Selection Committee was of the view that the particulars of a candidate were not suitable, it was to record brief reasons on the interview sheet. Ex.MW1/1 highlights that when claimant appeared before the Committee, he was found not suitable for the job. The committee recorded that he was unable to explain/speak smoothly. Thus, it is crystal clear that the brief reasons were recorded by the Committee in case of the claimant, when he was found not suitable for the job. Ex. MW1/1 further highlights that case of the claimant was reviewed on 19.01.1994 and he was again found unsuitable for messengerial post. There are no reasons to dispel the fact that the claimant was unable to speak smoothly before the Selection Committee. The Selection Committee was to select candidates on merit. As past services could give a candidate eligibility to appear before the Selection Committee, it was not determinative for his permanent absorption in the services of the Bank. Therefore, it is evident the claimant was found not suitable for the messengerial post.

19. As projected by the Bank, cases of the candidates, who were found unsuitable, were reviewed in January 1994 and following candidates were considered for their absorption in the service of the Bank.

Date of interview	Sl. No.	Name of the Candidate	Number of days worked	Result of interview	Reasons for unsuitability	Result reviewed on	Result after Review with remarks
1	2	3	4	5	6	7	8
02.06.1992	7	Brij Lal	284	Unsuitable	Original certificate not produced. Unable to express, awareness very poor	15.01.1994	Reviewed. Can be considered for non-messengerial post
02.06.1992	14	Ram Singh	90	Unsuitable	Mother and son have worked at the same branch and incorrect. Awareness ZERO	15.01.1994	Reviewed. Can be considered for non-messengerial post
02.06.1992	16	Smt. Purnima	36	Not suitable	Awareness poor	15.01.1994	Reviewed. Can be considered suitable for Sweepers
02.06.1992	32	Roop Chand, S/o Hardayal	397	Unsuitable	Unsuitable to express/ exposure nil	15.01.1994	Reviewed and considered suitable for non-messengerial post
03.06.1992	22	Madan Singh	56	Not suitable	General awareness about banking is poor. Outside knowledge lacks	15.01.1994	Reviewed and found suitable
03.06.1992	25	Sudhir Kumar	66	Unsuitable	General awareness very poor	15.01.1994	Reviewed and found suitable
04.06.1992	2	Hira Lal	60	Unsuitable	Unable to explain Awareness weak	15.01.1994	Reviewed and considered suitable.
04.06.1992	9	Surinder Kumar	100	Unsuitable	Awareness poor. Unconcerned with environment	15.01.1994	Reviewed and considered suitable.
04.06.1992	15	Balbir Singh	34	Unsuitable	Expression poor. Awareness low	15.01.1994	Reviewed and considered suitable
04.06.1992	32	Yogesh Kumar	46	Unsuitable	No activeness. Dull awareness zero	15.01.1994	Brother of Shri Chhottu Faraash. Reviewed-considered suitable
05.06.1992	3	Satvir Singh	87	Unsuitable	Interest in bank service bleak. Casual in replies. Awareness poor	19.01.1994	Reviewed and found suitable in view of past experience
05.06.1992	35	Nareayan Singh	365	Unsuitable	General awareness nil. Dull	19.01.1994	Reviewed-Found suitable in view of length of service
05.06.1992	40	Virender Singh	128	Unsuitable	Awareness poor	19.01.1994	Reviewed-Found suitable in view of length of service
06.06.1992	6	Virender Singh	86	Unsuitable	Quite dull. Inactive and nil in awareness, unable to express	19.01.1994	Reviewed for change and found suitable.
09.06.1992	21	Shiv Raj	99	Unsuitable	Quite unaware about environment	19.01.1994	Reviewed and found suitable in view of experience gained
09.06.1992	9	Rakesh Kumar	121	Unsuitable	Awareness Zero. Dull unable to give any correct answer	19.01.1994	Reviewed and found suitable in view of experience gained.
09.06.1992	21	Jagdish Chander	70	Unsuitable	Awareness poor	19.01.1994	Reviewed and found suitable for non-messengerial post
09.06.1992	35	Sanjay Sharma	92	Unsuitable	Casual labour. General awareness zero	19.01.1994	Reviewed and found suitable in view of experience gained.
09.06.1992	36	Davinder Kumar	102	Unsuitable	Awareness poor. Unable to respond.	19.01.1994	Reviewed and found suitable in view of length of service.

1	2	3	4	5	6	7	8
11.06.1992	2	Mond. Mubeen	86	Unsuitable	Awareness Zero. Unconversant with bank work	19.01.1994	Reviewed and found suitable
11.06.1992	10	Devi Prasad	113	Unsuitable	Certificate for temporary service not produced. Awareness low. Unconcerned with bank work	19.01.1994	Reviewed and found suitable subject to verification of temporary status.
11.06.1992	41	Asha Ram	85	Unsuitable	Unable to explain. Awareness nil	19.01.1994	Reviewed and found suitable in view of his experience.
11.06.1992	17	Mohinder Kumar	101	Unsuitable	Completely unaware of his involvement in Bank duties and also lack of general knowledge.	19.01.1994	Reviewed and found suitable due to his experience and academic background.

20. Claimant claims discrimination. For appreciation of his contentions, law is to be noted. Equality before law and equal protection of laws are fundamental rights of every person, ordains Article 14 of the Constitution. The guiding principles laid in Article 14 are that persons, who are similarly situated, shall be treated alike both in privileges conferred and liability imposed, which means that amongst equals the law should be equal and should be equally administered and that like should be treated alike. Article 16 of the Constitution guarantees equality of opportunities for all citizens in matters relating to employment or appointment to any office under the State. What is guaranteed is the equality of opportunity. Like all other employers, government is also entitled to pick and choose from amongst a large number of candidates offering themselves for employment. But the selection process must not be arbitrary. The guarantee given by clause (a) of Article 16 of the Constitution will cover (a) initial appointments (b) promotions (c) termination of employment (d) and matters relating to salary, periodical increments, leaves, gratuity, pension, age of superannuation etc. Matters relating to employment or appointments include all matters in relations to employment both prior and subsequent to the employment which are incidental to the employment and form part of the terms and conditions of such employment.

21. Fundamental rights guaranteed by Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable ground of discretion. Classification is the recognition of the relations, and in making it the Government must be allowed a wide latitude of discretion and judgement. In a way, the consequences of such classification would undoubtedly be to differentiate persons belonging to that class from others. The classification must be founded on an intelligible differentia which distinguished persons or things that are grouped together from others left out of the group and the differentia must have a rational relation to the object sought to be achieved. Classification may be made according to the nature of persons, nature of business, and may be based with reference to time.

22. Concept of equality guaranteed by Article 16 of the Constitution is something more than formal equality and enables the underprivileged groups to have a fair share by having more than equal chance and enables the State to give favoured treatment to those groups by achieving real equality with reference to social needs. 'Protection discrimination' enabled the State to adopt new strategy to bring underprivileged at par with the rest of the society, by providing all possible opportunities and incentives to them. Therefore a class may be allowed to have preferential treatment in the matter relating to employment or appointment. There cannot be rule of equality between members of separate and independent group of persons. Persons can be classified in different groups, based on in terms of nature of persons, nature of business and with reference to time. Therefore, classification based on nature of business for which sweepers were employed by the management, has a reasonable differentia.

23. As above list projects, Smt. Purnima, who worked for 36 days, was found unsuitable for her permanent absorption in the Bank, since her awareness was poor. Her case was reviewed on 15.01.94 and the Committee noted that she can be considered suitable for the post of sweeper. Shri Madan Singh had rendered 56 days service to the Bank and was found unsuitable since his general awareness about banking was poor. He was also found lacking in general knowledge. When his case was reviewed on 15.01.1994, he was found suitable for messengerial post. Shri Sudhir Kumar rendered 66 days service and was found unsuitable at the time of first interview since his general awareness was very poor. When his case was reviewed on 15.01.1994, he was found be suitable for the post. Shri Hira Lal was found unsuitable at the time of first interview since he was unable to explain and his awareness was weak. He had rendered only 60 days service to the Bank. On review, he was found suitable for permanent absorption in the Bank. In the case of Balbir Singh, he was also found unsuitable since his expression was poor and awareness low. He had rendered only 34 days service with the Bank. On review, he was found suitable for appointment in the

Bank. Shri Yogesh Kumar was also found unsuitable since he was found to be in active and dull. His awareness was zero. He had rendered 46 days service to the Bank. But when his case was reviewed on 15.01.1994, he was considered suitable for absorption in Bank's service. Shri Daya Ram was also found unsuitable since he was quite dull, inactive and nil in awareness. It was also noted that he was unable to express. He had rendered only 57 days service. When his case was reviewed on 19.01.1994, he was found suitable for the job. The Claimant was found unsuitable since he was unable to explain/speak smoothly. He had rendered 71 days service to the Bank. At the time of review, he was again found unsuitable for messengerial post. These facts highlight that Shri Yogesh Kumar, Balbir Singh, Hira Lal, Sudhir Kumar, and Madan Singh were on the same pedestal, relating to past record of service, their awareness, to explain facts before the Selection Committee and to give answers to the question put to them. Except the claimant, aforesaid persons were found suitable for absorption in the service of the Bank when their cases were reviewed. It is evident that the claimant was discriminated by the Selection Committee without any plausible cause or reason.

24. Can the Bank be permitted to treat equals differently? Answer lies in negative. In *Bal Kishan* [1990 (1) LLJ 61], a case which relates to confirmation of an employee, the Apex Court announced that no junior shall be confirmed or promoted without considering the case of his senior. The observations made by the Apex Court are reproduced thus:

“In service, there could be only one norm for conferment of promotion of persons belonging to the same cadre. No junior shall be confirmed or promoted without considering the case of his senior. Any deviation from this principle will have demoralizing effect in service apart from their being contrary to Article 16(1) of the Constitution.”

25. The Bank projected that in *Uma Devi* [2006 (4) SCC 1] the Apex Court ruled that a person who entered service dehors the rules has no right for regularization or continuance in service. The principle of law laid by the Apex Court in the aforesaid case is not a matter of dispute. Whether the law so laid would allow the Bank to discriminate the claimant from the persons referred above, who had rendered less service than the claimant, were placed on similar pedestal in the matter of their performance before the Selection Committee? Such a proposition was considered by the Apex Court in *Pooran Chandra Pandey* [2007 (12) Scale 304], wherein it was announced that precedent in *Uma Devi* (supra) cannot be applied mechanically without considering facts of a particular case. In *Uma Devi* it was ruled that a person, who entered the government service dehors rules cannot claim as right for continuance or regularization of service. However, the said

decision nowhere speaks of case where absorption in service has been sought in pursuance of fundamental rights guaranteed by Article 14 of the Constitution. In *Pooran Chandra Pandey* (Supra) there were two sets of employees who were daily wagers, that it (i) the original employees of the U.P. State Electricity Board and (ii) the employees of the society, who subsequently became employees of the Electricity Board. The High Court ruled that there was no ground for discriminating between the two sets of employees. When issue reached the Apex Court it was ruled that since the parties were all appointed in the society before 4th of May, 1990, they cannot be denied benefit of the decision of the Electricity Board dated 28th of November, 1996, permitting regularization of the employees of the Electricity Board who were working from before 4.5.1990. It was announced that to take a contrary view would violate Article 14 of the Constitution. The courts cannot read *Uma Devi* case in a manner which will make it in conflict with Article 14 of the Constitution. Thus the Apex Court made it clear in *Pooran Chandra Pandey* (supra) that when regularization is to be ordered in pursuance of Article 14 of the Constitution precedent laid down in *Uma Devi* will not come in between.

26. In the light of above legal provisions and factual matrix, it is announced that the Bank cannot be permitted to discriminate amongst equals. In case of discrimination, Tribunal will grant indulgence. Therefore it is concluded that the action of the Bank in not selecting the claimant for absorption in the service was not found to be justified. Claimant cannot be treated differently than persons who were similarly placed. Consequently, the Bank is commanded to absorb the claimant in service notionally from the date when the aforesaid persons were absorbed. He will get all consequential benefits except financial benefits which would be granted to him from the date when this award becomes effective. An award is accordingly passed. It be sent to the appropriate Government for publication.

Dated : 23.5.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 22 जुलाई, 2013

कांआ 1760.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 137/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22/07/2013 को प्राप्त हुआ था।

[सं एल-12012/68/2001-आईआर (बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 22nd July, 2013

S.O. 1760.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (CGIT/LC/R/No. 137/2001) of the Central Government Industrial/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India, and their workmen, which was received by the Central Government on 22/07/2013.

[No. L-12012/68/2001-IR (B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/137/2001

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Naresh Batham,
S/o Ramcharan Batham
Janakganj Shesh ki Bagya, Hardol,
Near Lala Lashkar,
GwaliorWorkman

Versus

The Regional Manager,
Central Bank of India, Regional Office,
Nirma Bhawan, AG Office Road,
GwaliorManagement

AWARD

Passed on this 10th day of July 2013

1. As per letter dated 16-7/24-8-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/68/2001-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Regional Manager, Central Bank of India, Gwalior in terminating the services of Shri Naresh Batham S/o Ramcharan Batham w.e.f. May 1990 is justified? If not, what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 3/1 to 3/5. Case of workman is that he was working as peon/daftary in June 1987 to May 1990 with IInd party for total 266 days. The management of IInd party informed him to appear for written test on 14-3-93. He was allotted Roll

No. GWL-05 for appearing in Written Test at Gwalior. The workman had appear in written test. IInd party management called him to Regional office, Nirma Bhawan, Gwalior. After he had passed written test, he was asked to produce necessary documents. The documents were deposited by him on 24-9-93. Thereafter workman was not called by management neither he was informed the result of written test. That workman submitted several applications to the management of IInd party for result of written test. Any of his application were not replied. That the workman had worked for more than six months in establishment of IInd party. That his services were terminated without order in writing, without show-cause notice, he had completed 240 days service, principles of last come first go was not followed. Termination of service was in violation of Section 25-F, G, H of I.D. Act. On such grounds, workman prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 10/1 to 10/10 denying all material contentions of workman. It is denied that workman Naresh Batham had worked for 240 days continuously in any of calendar year. That the workman never worked as peon in Bank. The reference is vague. The workman was neither appointed nor terminated by the Bank. The reference is improper. That the Bank is statutory corporation having zonal and regional branches. There is prevailing procedure for appointment of peon/daftary. Such appointments are made by Head office giving vide publication in newspapers, names are sponsored through Employment Exchange. Workman had not completed 240 days continuous service as part time employee. His dis-engagement is not retrenchment but it is covered under clause (bb) (oo) of Section-2 of I.D. Act. The claim of workman is not tenable. There was no employee employer relationship. Therefore the dispute is not tenable.

4. As per IInd party, workman not worked as peon or daftary during June 87 to 1990. Workman had not worked for 260 days claimed by him. Other contentions of workman are denied. Workman was not working on vacant post for period of six months. He is not entitled to regularization. The workman was called for absorption on 14-3-93. The written test was conducted as per direction issued by Hon'ble high court, Gwalior in Writ Petition. The result of the written test was declared and the Writ petition was disposed off. On such ground, IInd party submits that workman is not entitled to any relief prayed by him.

5. Ist party workman filed rejoinder at Page 14/1 to 14/7 denying all adverse contentions of management of IInd party and reiterated his earlier pleadings and prayed for reinstatement with back wages.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under.

My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Regional Manager, Central Bank of India, Gwalior in terminating the services of Shri Naresh Batham S/o Ramcharan Batham w.e.f. May 1990 is legal?	In affirmative
(ii) If so, to what relief the workman is entitled to?"	Relief prayed by workman is rejected.

REASONS

Ist party workman is challenging order of his terminating from May 1990 as per the terms of reference. However in his statement of claim, Ist party has contented that he was working as peon/daftary from June 87 to 1990 for 266 days. His above pleadings is clear that during the entire period from 87 to 90, he worked for 266 days. In para-10 of his statement of claim, he contents that he had completed more than 240 days continuous service with the management of the Bank. Principles of last come first go was not followed. Termination of his service is in violation of Section 25-G, H of I.D. Act. His pleadings are silent about completion of 240 days continuous service during calendar year preceding his termination. In his affidavit of evidence, workman has stated that he was working on daily wages in temporary capacity upto 2-1-89, he has stated that he was working as peon/daftary from June 87 to May 1990 for 266 days. That he was called for written test on 24-9-93. Documents were deposited by him as per direction of the Bank. Thereafter he was not communicated anything after his repeated applications. In para-9 of his affidavit, he states that he completed 240 days continuous service under the Bank Manager. The principles of last come first go is not followed. His affidavit is silent about the contention that he has completed 240 days continuous service preceding his date of termination. In his cross-examination, workman says that he was not successful in the written test/interview. Prior to interview, he was working in Central Bank, Gwalior branch as peon. The document 3/12 shows his working on casual basis. He has not produced other documents about working in the Bank. The evidence of management's witness Shri Ashwin Kumar Arora on affidavit has stated that the workman was never working as peon/daftary from June 87 to May 1990. That he was called for written test on 14-3-93, workman was not successful in interview. The evidence of management's witness on above point is corroborated from evidence in cross-examination of the workman. The documents Exhibit W-1, W-2 also corroborates the contentions of the IInd party. Document Exhibit W-3 is

copy of Bipartite Settlement for absorption of temporary employees. Clause 4 of Exhibit W-3 provides temporary employees who have worked for 180 days during the period from 1-1-87 to 24-12-90 and are registered with the employment Exchange but have not been sponsored will be called to appear in the immediate sub-staff recruitment test as and when held. As per above clause, workman was called for Written Test. He was also called for submitting documents. Workman in his cross-examination says that he has not passed written test. Thus the evidence of record shows that workman has not completed 240 days continuous service during 12 calendar months preceding his termination. He has not passed written test for absorption therefore the action taken by IInd party cannot be said illegal. For above reasons, I record my finding in Point No. 1 in Affirmative.

8. In the result, award is passed as under:—

1. The action of the management of Regional Manager, Central Bank of India, Gwalior in terminating the services of Shri Naresh Batham S/o Ramcharan Batham w.e.f. May 1990 is legal.
2. Relief prayed by workman is rejected.

R.B. PATLE, Presiding Officer

नई दिल्ली, 22 जुलाई, 2013

कांआ 1761.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय धनबाद 2 के प्रचाट (संदर्भ संख्या 31/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.05.2013 को प्राप्त हुआ था।

[सं एल-12012/44/2011-आईआर (बी-II)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 22nd July, 2013

S.O. 1761.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 31/2011) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workman, which was received by the Central Government on 15.05.2013.

[No. L-12012/44/2011-IR(B-II)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL (No. 2) AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Sec. 10(1)(d)
of the I.D. Act, 1947.

REFERENCE NO. 31 OF 2011.

PARTIES: Employer in relation to the management of
UCO Bank, Zonal Office, Patna and their
workman.

APPEARANCES:

On behalf of the workman: None

On behalf of the Management : Mr. D. K. Verma, Ld. Adv.

State : Bihar Industry: Banking

Dated, Dhanbad 10th April, 2013.

AWARD

The Government of India, Ministry of Labour in
exercise of the powers conferred on them under Section
10(1)(d) of the I.D. Act, 1947 has referred the following
dispute to this Tribunal for adjudication vide their Order
No. L-12012/44/2011-IR(B-II) dt. 11.11.2011.

SCHEDULE

"Whether the action of the management of UCO
Bank, Zonal Office, Patna in imposing the punishment
of dismissal from services of the bank upon Sri Arya
Nath Singh, Ex-Head Cashier vide order dated
11.1.2008 is legal and justified? What relief the
concerned workman is entitled to?."

2. No Representative for the UCO Bank Employees
Association, Patna (Bihar) appeared nor any petition filed
on behalf of Union Representative/workman Arya Nath
Singh in connection with the same case pending before
the Patna Tribunal, Hence his intention for the closure of
the present case, as mentioned in Order No. 2 dt. 1.2.2012
as per the submission of Mr. B. Prasad, the Union
Representative for the workman. Mr. D.K. Verma, Ld.
Advocate for the Management of UCO Bank present and
filed his authority on behalf of the management.

Perusal of the case record reveals the Schedule to
the Reference about an issue over imposition of
punishment of dismissal of the workman, Ex. Head Cashier
from the service of the Bank as per Order dt. 11.1.2008.
Since the aforesaid Union Representative for the workman
has intended to close the case on the ground of pendency
of the similar reference before the Patna Tribunal, No
industrial dispute concerning the Reference exists. Hence
the case is closed and accordingly, an order is passed as
no dispute.

KISHORI RAM, Presiding Officer

नई दिल्ली, 23 जुलाई, 2013

कांआ० 1762.—औद्योगिक विवाद अधिनियम, 1947 (1947
का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स भारत
पेट्रोलियम कॉर्पोरेशन लिमिटेड मुम्बई के प्रबंधन के संबंध में नियोजकों
और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में
केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, मुम्बई के
पंचाट (संदर्भ संख्या 69/2009) को प्रकाशित करती है, जो केन्द्रीय
सरकार को 19/7/2013 को प्राप्त हुआ था।

[सं० एल-30011/20/2009-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd July, 2013

S.O. 1762.—In pursuance of Section 17 of the
Industrial Dispute Act, 1947 (14 of 1947), the Central
Government hereby publishes the Award (Ref. No. 69/2009)
of the Central Government Industrial Tribunal/Labour Court
Mumbai-2 now as shown in the Annexure in the Industrial
Dispute between the employers in relation to the
management of M/s Bharat Petroleum Corporation Ltd.
Mumbai and their workman, which was received by the
Central Government on 19/7/2013.

[No. L-30011/20/2009-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

PRESENT : K.B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/69 of 2009

**Employers in Relation to the Management of Bharat
Petroleum Corporation Ltd.**

The Dy. General Manager (HRS) West
Bharat Petroleum Corporation Ltd
4 & 6, Bharat Bhavan
Currimbhoy Road
Ballard East (PB No. 688)
Mumbai-400 001.

AND**THEIR WORKMEN**

- (1) The General Secretary
Petroleum Workmen's Union
C/o C-3, Rashmi Complex

Near Mental Hospital
Thane

- (2) The General Secretary
BPC Process Technicians & Analysts Union
G-9, Mahul Sea Breeze CHS

Bahari Colony, Mahul
Mumbai-400074

- (3) The General Secretary
Bharat Petroleum Corporation
Refinery Employees Union
Navgire Niwas, Near Shalimar Hotel
Mahul
Mumbai-400074.

- (4) The President
Bharat Petroleum Technician and non-Technical
Employees Association
Flat No. 502, Saileela RCF Road
Anik Village, Chambur
Mumbai-400074.

APPEARANCES:

For the Employer : Mr. R. S. Pai,
Advocate

For the Union Nos. 1 to 4 : Mr M. V. Palkar,
Advocate

Mumbai, dated the 13th June 2013.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-30011/20/2009-IR (M), dated 03.09.2009 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the demand of the Bharat Petroleum Corporation Process Technicians and Analysts Union, Bharat Petroleum Corporation Refinery Employees Union, Petroleum Workmen's Union, Bharat Petroleum Technician and Non-Technical Employees Association merging 50% Dearness Allowance in the basic pay of the workmen w.e.f. 1/1/2007 as per the Guidelines of Department of Public Enterprises is legal and justified? What relief the workmen are entitled to?

2. After receipt of the reference both the parties were served with notice of the reference. The second party unions appeared through their legal representatives and filed their joint Statement of Claim at Ex-8. First party management resisted the statement of claim of the unions

by filing their written statement at Ex-10. Unions filed their rejoinder at Ex-11 to the Written statement. Advocate for management filed application (Ex-17) for framing preliminary issues. As per orders on Ex-17 preliminary Issues are framed at Ex-18. Union led their evidence by filling affidavit in lieu of Examination in Chief of Mr. Pandurang D. Tikam at Ex-20/WW-1. Thereafter both parties filed their written arguments and the matter was reserved for Part-I Award.

3. Today, Mr. R.S. Pai, Advocate for the management alongwith Mr. P.I. Haldankar representative of union No. 1, Mr. Kamlesh Singh representative of Union No. 2, Mr. K.A. Nair representative of union No. 3 and Ms. Sadhana Dharkar representative of union No. 4 appeared before this Tribunal and filed joint application (Ex-30) for taking the matter on today's board. Orders were passed on Ex-30 and the matter was taken up on the board. Both the parties jointly filed application (Ex-31) stating that the matter has been amicably settled as per Memorandum of Settlement dated 31.05.2013 and therefore prayed to dispose of the reference. Since the dispute is settled, I think it proper to dispose of the reference for want of prosecution. Hence the order.

ORDER

The reference is dismissed for want of prosecution.
Dated 13.06.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 23 जुलाई, 2013

कांआ 1763.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन आयल कार्पोरेशन लिमिटेड मुम्बई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, मुम्बई के पंचाट (संदर्भ संख्या 58/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 19/7/2013 को प्राप्त हुआ था ।

[सं० एल-30012/17/2006-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 23rd July, 2013

S.O. 1763.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No. 58/2006) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Indian Oil Corporation Ltd., Mumbai and their workman, which was received by the Central Government on 19/7/2013.

[No. L-30012/17/2006-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT :** K.B. KATAKE, Presiding Officer**REFERENCE NO. CGIT-2/58 of 2006****EMPLOYERS IN RELATION TO THE MANAGEMENT
OF INDIAN OIL CORPORATION LTD.**

The Dy. General Manager (ER)
 Indian Oil Corporation Ltd.
 Western Region 254-C
 Dr. Annie Besant Road
 Prabhadevi
 Mumbai-400 025.

AND**THEIR WORKMEN**

Shri Prakash S. Valanke
 Shantivan CHS
 Plot No. 90, Room No. 9
 MHADA Colony
 Sardar Patel Nagar
 Andheri (W)
 Mumbai-400 053.

APPEARANCES:

FOR THE EMPLOYER : Mr. R.V. Paranjpe,
 Advocate.
 FOR THE WORKMEN : Mr. J.H. Sawant,
 Advocate.

Mumbai, dated the 29th April, 2013

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-30012/17/2006-IR (M), dated 21.11.2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the action of the IOCL, Mumbai in imposing the punishment of compulsory superannuation of services to Shri Prakash S. Valanke w.e.f. 1/12/2001 is justified? If not, what relief the workman, Shri Prakash S. Valanke is entitled to?"

2. After receipt of the reference notices were issued to both the parties. In response to the notice the second party workman filed his statement of claim at Ex-6. According to him he was appointed by the first party management as staff car driver w.e.f. 12/04/1986. He was

promoted to the post of Tanker Truck Driver and subsequently to the post of Sr. Tanker Truck Driver. He was awarded with safety award as well as golden service award. He has meritorious and unblemished service record. During the course of his employment on 14/12/1995 the workman sustained head injury. He was admitted in the hospital and after treatment he was discharged from the hospital. The doctor issued certificate certifying that he was fit to do routine duty except driving. The workman report for his duty with a fitness certificate dt 10/11/1998. He was assigned the work in the nature of charge-man (F). He was required to carry out the work in respect of general maintenance of tanker truck etc. and was attending his duty. However General Manager (MO) terminated his services w.e.f 1/11/2001 by serving the order dated 15/10/2001 on the subject of permanent retirement on medical grounds. The workman requested repeatedly to the management personally as well as through Petroleum Welfare Association to set aside the said order and for reinstatement in the service. However the management did not pay any attention. Therefore the workman raised industrial dispute before ALC (C), Mumbai. As conciliation failed as per the report of ALC (C), the Labour Ministry sent the reference to this Tribunal. According to the workman the action of the management terminating his services w.e.f. 1/11/2001 is illegal, unjustified and is in violation of principles of natural justice. The workman was attending his duty assigned by the management for about 6 years after the accident and he was able to perform the duty of Charge-man/Foreman. No doctor had examined the workman. His signature was obtained on some paper of the medical officer of the company. The management merely made some paper arrangement in order to terminate the services of the workman to show premature retirement on medical ground. Copy of the medical report was never given to the workman though he made repeated request for the same. Therefore workman prays that he be reinstated in service w.e.f 1/11/2011 with full back-wages and consequential benefit and cost and compensation.

3. The first party resisted the statement of claim vide its written statement at Ex-8. According to them the reference is not maintainable. According to them the services of second party were not terminated by the first party as has been alleged. Infact the second party was granted premature retirement on medical ground. On premature retirement the second party has collected his full and final settlement dues. The reference suffers from delay and laches as cause of action arose in November, 2001 and second party has raised dispute in 2006.

4. During the course of employment on 14/12/1995 the tanker truck met with an accident at BEST Oshiwara Mumbai in which the second party suffered head injury and was admitted in Hinduja Hospital. He was undergoing treatment for quite a long time. He joined duty on 12/1/1996. However he was not performing any work. The

Terminal Manager had recommended for revaluation of second party's fitness to perform his duties. The Neurologist, Hinduja Hospital certified that due to head injury, second party continues to have giddiness and he was fit to do routine duties except driving. Though the second party was on roll of the first party Corporation at Wadala Terminal as Tank Truck Driver, first party could not utilise his services as Tank Truck Driver due to the observations of the Neurologist. As such the second party was idling since January 1996. The second party requested for re-designation of his post as Foreman (F) either at Wadala Terminal or Seweri Terminal. However his request could not be accepted due to his medical condition and the second party continued to be in the employment without performing any duties. The second party also requested for giving alternative assignment of a clerical job and also informed that due to brain haemorrhage he could not go on top of the truck. His request could not be considered as field operation job are arduous nature and second party could not have performed the same.

5. As the second party was not performing any work, as per the policy of the corporation a medical board was constituted. It conducted necessary medical examinations of the second party and vide its report dt. 26/9/2001 the board opined that second party was unfit to work as a Tank Truck Driver or to drive any other vehicle. The copy of the said report was made available to the second party. On the basis of the report of medical board as per the policy of first party Corporation, the second party was made to retire prematurely on medical ground. The second party was eligible and was given superannuation benefits from the date of his notional retirement. The second party received all the retirement benefits such as leave encashment, Gratuity, ex-gratia payment and provident fund. The second party stood prematurely retired on medical grounds. Neither he was removed from service nor retrenched. He also received all the retirement benefits. In the circumstances the first party contended that the second party is not entitled to be reinstated with back wages as has been claimed. Therefore they pray that the reference be rejected with cost.

6. The second party vide his rejoinder at Ex-9 denied the contentions in the Written statement and reiterated his claim in the statement of claim.

7. Following are the issues for my determination, I record my findings thereon for the reasons to follow :

Sl. No.	Issues	Findings
1	2	3
1.	Whether decision of the first party dated 15/10/2001 is illegal?	No,
2.	Whether first party prove that second party was asked to take premature	Yes.

1	2	3
	retirement on medical ground and was not terminated?	
3.	Is said decision of first party just and legal?	Yes.
4.	Is second party entitled for reinstatement and quashing aside the decision of first party dated 15/10/2001?	No.
5.	What order?	As per order below.

REASONS

Issues nos. 1 to 3:-

8. These issues are interlinked therefore in order to avoid repetition of discussion they are discussed and decided simultaneously.

9. In the case at hand the second party claims that the first party Corporation has terminated his services illegally without giving him any opportunity and without any medical examination. As against this it is the case of the first party that, as second party workman met with an accident and sustained head injury, the concerned neurosurgeon has declared him unfit to drive any vehicle. According to the first party the second party workman was recruited as a Driver and since the accident and head injury he was not doing any work. His request to give any other work was also not acceptable as he was unfit to do the field work or to drive any vehicle. Therefore according to the first party Medical Board was constituted and the workman was sent for medical examination by the Medical Board. According to them after examination, Board declared the second party workman as unfit to drive any vehicle. The workman was unfit to do the work for which he was recruited. Therefore the workman was given premature retirement on medical ground. According to the first party the workman was also given all the retirement benefit of superannuation. According to the first party amount of leave salary, gratuity, ex-gratia payment and PF were received by the workman after his premature retirement. In the circumstances according to the first party the second party workman cannot be reinstated in the service. According to them they have followed the procedure prescribed for premature retirement on medical ground. The Medical Board declared the workman as unfit to do the work for which he was recruited.

10. In this respect the Ld. adv. for the first party pointed out that the workman himself has contended in his statement of claim that doctors from Hinduja Hospital certified that he was fit to do any other work except driving any vehicle. According to him even doctors from Hinduja Hospital declared him unfit to drive any vehicle. The same

opinin was given by the Medical Board. The medical report submitted by the Medical Board is on record at Ex-23. The Board has declared the workman as unfit to drive any vehicle. The workman has also not disputed the said fact. According to him, the management ought to have given him some other assignment. In short the fact is not disputed that the workman is unfit to drive any vehicle. The fact is also not disputed that workman was employed as a Driver. Initially he was driving staff car. After promotion he started driving the Truck Tankers. As he was declared unfit to do the work for which he was recruited, the Corporation was not under obligation to give him any other work. It was at the discretion of the Corporation whether to adjust him somewhere else. However as a matter of right workman cannot claim his retention in service as he was declared unfit to do the work for which he was recruited. In this backdrop it cannot be said that services of the second party was terminated by the first party. In this respect Ld. adv. for the first party resorted to Apex Court ruling in the Workmen of Bangalore woollen Cotton and Silk Mills Co. Ltd. V/s. Management of Bangalore Woollen, Cotton, and Silk Mills Co. Ltd. AIR 1962 SC 1363. In that case 10 workmen were discharged from service on the ground that they were medically unfit. In this respect the Hon'ble Court in para 7 of the judgement observed that:

".....it cannot be said that they had been discharged on the ground that their services were no longer required, on the contrary they were not in a fit condition of health to continue in service at all. Their physical condition prevented them from rendering the service for which they had been employed. The reason for their discharge was that they could not render the services required of them and which under the contract of service they were bound to render. Their service cannot be said to have been terminated on the ground that such services were not required".

11. In the light of above ruling the Ld. adv for the first party submitted that, as the second party workman was prematurely retired on medical ground, neither it can be said retrenchment nor termination of services. Therefore he cannot claim reinstatement. In the light of the observations of Hon'ble Court I come to the conclusion that premature retirement on medical ground cannot be said termination or retrenchment. Therefore neither the first party was required to follow the procedure prescribed under Sec 25-F of I. D. Act nor any showcause notice was necessary. Accordingly I decide this issue no.1 in the negative. Consequently I decide this issue no.2 & 3 in the affirmative.

Issue No. 4:-

12. In the light of discussions and findings on the issues no.1 to 3 above it is clear that the second party workman retired prematurely on medical ground. Neither

he was terminated nor it can be called retrenchment. The action of premature retirement cannot be called illegal as there is evidence on record that due to head injury, the workman was unable to perform his duty as a driver for which he was appointed. Even the second party has not disputed the fact that, there was medical advice to him not to drive any vehicle. The opinion of the medical board also discloses the fact that the second party was not fit to drive any vehicle. In the circumstances the Ld. adv for the second party submitted that though the workman was unfit to drive a vehicle the first party management could have given him some other light work or some clerical work. From the facts and circumstances on record it is clear that the second party was not fit for the duty of Driver for which he was appointed as he has become disabled. In this backdrop it is at the discretion of the first party whether to accommodate him in the service elsewhere or to retire him prematurely on medical ground. The second party cannot claim as a matter of right some alternative duty. In the circumstances the decision of the first party dated 15/10/2001 cannot be said illegal. Consequently I hold that the second party workman is not entitled to be reinstated in the service as has been claimed.

13. The Ld. adv. for the first party in this respect further submitted that after the premature retirement on medical ground, the workman has accepted all the amount of retirement benefits. The workman has admitted in his cross examination at Ex-13 that, he accepted the amount of Rs.5,39,550/- towards full and final settlement from the first party. He also admitted in his cross that he also received an amount of Rs.5 lakhs and odd of P.F. He received both the amounts in September 2006. In the circumstances the Ld. adv for the first party submitted that, the amount of retirement benefit is accepted by the second party workman. Therefore the question of adjudicating the dispute for reinstatement does not arise unless he deposits the entire amount with interest thereon. In support of his argument Ld. adv. for the first party cited Apex Court ruling in Mansingh V/s. Maruti Suzuki India Ltd. & Anr 2012 (3) AWC 3134 SC. In that case under the VRS scheme the workman therein had received the amount of retirement benefits. Thereafter he challenged the action of the management by raising industrial dispute. The company therein challenged the competence and validity of reference in a Writ Petition before Punjab and Haryana High Court. It was contended on behalf of the company that, having accepted the full monetary benefit under the VRS, it was no longer open to the appellant to question or challenge his termination of service and in any case any adjudication on the dispute raised by the workman should not be allowed to proceed with, while he has retained all the monetary benefits collected by him under the scheme. In that matter Hon'ble High Court directed the workman to deposit the amount in the Court, which he had received with interest @ 7.5% from the date when he has received the amount, to

the date of deposit. The matter was taken to Apex Court. The Apex Court while upholding the direction except the interest, observed that;

"Having regard to the fact that appellant is no longer in service, we feel that the end of justice would meet if the direction for refund is confined only to the principal amount received by the appellant under VRS, without any interest. In case the amount as directed is deposited by the appellant by November 13, 2011 the reference shall proceed in accordance with law, otherwise it would stand quashed."

14. The Ld. adv. for the first party also resorted to another Apex Court ruling in Ramesh Chandra Shukla etc. V/s. Vikram Cements etc. (2008) 14 SCC 58 wherein the Hon'ble Apex Court laid down the same ratio that, after acceptance of retirement benefits, the workman should deposit the same and the claim should not be proceeded with till such payment is made. If the payment is not made within the stipulated time, the applications will automatically stand dismissed.

15. In the case at hand this point was not raised at an earliest. On the other hand the reference was proceeded even the evidence was recorded, arguments were heard. Now there is no point in giving direction to the second party to deposit the retirement benefit in the Court and to keep the matter in abeyance till he deposits the amount. Furthermore I would like to point out that in the case at hand hearing is completed and in issue no.1 to 3 above it is held that the premature retirement of the workman is legal and proper. Now there is no point in keeping the matter in

abeyance. The conclusion herein also arrived at that the workman is not entitled to be reinstated. Accordingly I decide this issue no.4 in the negative and proceed to pass the following order:

ORDER

The reference stands rejected with no order as to cost.

Date: 29.04.2013

K. B. KATAKE, Presiding Officer

नई दिल्ली, 7 अगस्त, 2013

कांआ 1764.—राष्ट्रपति, श्री केवल कृष्ण, को 01.08.2013 (पूर्वाहन) से केन्द्रीय सरकार औद्योगिक न्यायाधीकरण-सह-श्रम न्यायालय नं० 2, चंडीगढ़, के पीठासीन अधिकारी के रूप में 04.11.2017 तक अथवा अगले आदेशों तक, जो भी पहले हो, नियुक्त करते हैं।

[सं० ए-11016/6/2012-सीएलएस-II]

राजेश कुमार, अवर सचिव

New Delhi, the 7th August, 2013

S.O. 1764.—The President is pleased to appoint Sh. Lewal Krishan as Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh w.e.f. 01.08.2013 (F.N.) for a period upto 04.11.2017 or until further orders, which is earlier.

[No. A-11016/6/2012-CLS-II]

RAJESH KUMAR, Under Secy.